THE
Britannic Conſtitution:
OR, THE
FUNDAMENTAL FORM
OF
GOVERNMENT
IN
BRITAIN.

DEMONSTRATING,

The ORIGINAL CONTRACT Entred into by KING and PEOPLE, according to the Primary Inſtitutions thereof, in this Nation.

Wherein is PROVED,

That the Placing on the Throne King WILLIAM III. was the *Natural Fruit* and *Effect* of the *Original* CONSTITUTION.

AND,

That the SUCCESSION to This Crown, Eſtabliſh'd in the Preſent PROTESTANT HEIRS, is *De Jure*, and Juſtify'd, by the FUNDAMENTAL LAWS of *GREAT BRITAIN.*

AND

Many Important *Original* POWERS and PRIVILEGES, of Both Houſes of PARLIAMENT, are Exhibited.

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TO

HIS HIGHNESS

Prince FREDERIC.

SIR,

THE Design of this Treatise being to Describe and Illustrate that Incomparable CONSTITUTION, which Called to the Crown and Government of *Great Britain*, your Royal Grandfather, His Most Excellent Majesty King *GEORGE*, and of which his Majesty is become the Assertor and Defender; I have therefore presumed to hope, the Royal Family will Graciously Condescend to be its Protectors.

The Disposition of the System is intirely New, and is intended to be a Present (as is humbly hoped, not Unacceptable, and, perhaps, not Unuseful) to the Young Princes of the Protestant Hereditary Line, and, probably, may Yield

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Yield ſome Entertainment to your Highneſs, until you ſhall ſee that Kingdom, to the Crown whereof you are, in the due Courſe of Deſcent, as Rightfully, as Apparently, to Succeed.

The Undertaking Treats of the Government in *Britain* only; A Proſpect therefore of the Nation, which is the Object of that Government, and of thoſe Advantages which diſtinguiſh it from all other Countries, may Form in your Highneſs's Mind, an *Idea* of its Glory, ſuitable to that of its Conſtitution in Government.

When this Kingdom's Power and Strength are placed in a Light Oppoſite to thoſe of other Nations, it will appear, That *Great Britain* being Surrounded by the Seas, its Borders are as Indiſputable by its Neighbours, as Inacceſſible by Land Armies; The Inhabitants Live diſperſedly all over the Iſland, and yet ſecurely, without Fortifications, and without Fear of ſudden Invaſions; Whereas, on the Continent, all the Neighbouring Potentates are continually Vexed, or Vexing each other, with inceſſant Broils, about their Boundaries, and the People, for fear of Surprize by ſudden Irruptions through their Frontiers, dare not Live ſeparately; but for Safety, Reſort (with their beſt Moveables) to Walled Fortreſſes: The Inconveniencies whereof, both to the Governor and Governed, are too Conſpicuous to want Enumerations.

Great Britain's Dominions are partly *Terrene*, and partly *Marine*; The *Terrene*, Computing *Ireland*, as Embodied with *Britain*, are Large and

and Extenſive; but when their Fertility and Products are Conſidered, they Equal, if not Exceed, the Beſt in *Europe*; The Plenty of their Corn, Fat Cattle, and Mines of Tin and Lead, are Admirably Valuable: But, above all, the great Quantities and Goodneſs of the *Britiſh* Wooll, are the Source and Spring of Trade, and a Fund of Treaſures, that exceeds the *American* Gold and Silver Mines; and if the Intereſt of the Graziers and Woollen Manufacturers could be Reconciled, that Product would be capable of Immenſe Improvements.

Great Britain's Power over the Fiſheries, is another Magazine of Riches, Equal to any of the former, whenſoever *Britons* ſhall be Led to that Work by their own Inclinations.

As for the *Marine* Dominions, Nature and Neceſſity have appropriated to *Great Britain* the Sovereignty of the Seas, becauſe if that Dominion were in any other Hands, *Britons* would be no better than Priſoners: Nature, therefore, which Supplies every Being with Means for its own Preſervation, hath furniſhed *Britain* with the Beſt and Strongeſt Timber for Building Ships of War, thoſe Floating Caſtles.

And Neceſſity hath Impoſed on *Britons*, the Learning and Exerciſe of that Species of the Art of War, as a Qualification to Vindicate that Dominion, and with it, their Liberty.

This Sovereignty being ſuppoſed, the *Marine* Dominions of *Britain* Extend as far as the Seas,

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that Beat on the Shores of the Remoteſt Regions, which makes them vaſtly Larger than any other upon the Globe.

But 'tis the *Britannic Conſtitution* that gives this Kingdom a Luſtre, above other Nations; for it is *Imperium Legum*; it equally Advances the Greatneſs and Power of the Crown, at the ſame Time, as it Secures to *Britons*, their Private Property, Freedom, and Liberty, by ſuch Walls of Defence, as are not to be found in any other Parts of the Univerſe.

The *Britiſh* Hiſtory Tranſmits to us, as many Inſtances of Great, Rich, and Victorious Kings, and as much Beloved at Home, and Reſpected Abroad, as are to be found in the Memorials of any other Nation; but thoſe Kings were ſuch only, as Aſſembled their Parliaments frequently, were Adviſed by them, and made this Conſtitution the Rule of their Government.

Thus, SIR, have I Repreſented the *Britiſh* Kingdom, and in this Work, the Form of Government in It, which, in the Day of Extremity, was Secured by the Happy Acceſſion to the Crown of his Sacred Majeſty King *GEORGE*, and is ſtill Secured by his ſteddy Adminiſtration; which Security is, to the greateſt Satisfaction of *Britons*, Strengthened by the Apparent Succeſſion of his Royal Highneſs the Prince of *Wales*, your Illuſtrious Father: And although I muſt not Expect to ſee the Day of Your Triumphs, after that Length of Glory on Earth, which I moſt heartily wiſh to your Royal Progenitors,

Progenitors, yet my Zeal warms me to imagine, I ſee, as in a Glaſs, the Felicity of my Country Continued to thoſe future Times, which your Growing Virtues make *Britons* Expect with Pleaſure; For which Reaſons, the Antient Vigour of the *Britiſh* Nation being thus Animated, and thus Governed, will be always Exerted in the Service of ſuch Excellent Princes, and will be a Fund of Power, to Raiſe your Highneſs, in Proceſs of Time, to all the Grandeur and Glory your Great Soul can Aſpire to.

It is therefore my Hope, your Highneſs will Pleaſe to Excuſe the Boldneſs of this Addreſs, from him, who is Inviolably Attached to the Intereſts of Your Royal Houſe, and is, with the Profoundeſt Humility and Submiſſion,

Your HIGHNESS'S

Moſt Obedient,

And Moſt Devoted

Humble Servant,

Roger Acherley.

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THE INTRODUCTION.

NO Man can be ſo Inſenſible, as not to obſerve, That the Great Diſaffection in many People, to the preſent Eſtabliſhment, with which their Minds fluctuate, proceeds from their Ignorance of the *Conſtitution and the Laws* of this Nation, touching the Rights of the Government of it.

The Laws, by which JUSTICE between Subject and Subject, is to be Adminiſtred, and by which they, as between one another, are to behave, are pretty well known; But the Laws or CONSTITUTION, by which the Supreme Governors are to *Succeed*, are not only very little Known, but very much Miſtaken; for moſt of the *Britiſh* Subjects, who have Undertaken to write For and Againſt the preſent Eſtabliſhment, and the Foundation on which it Subſiſts; Conſiſt, principally of Eccleſiaſtical Gentlemen; And as to the *Writers* of the firſt Sort, Their Way of Reaſoning has pointed at all Kings in General, and to the Relation between all Sovereigns and their Subjects; which is indeed Bright and Inſtructive, but does

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not Conclude or Convince Men of the *Rights* of the *Governors* and *Governed* in this particular Nation.

And as to the *Later Sort of Writers*, Their Notions are Confined to the *Jewiſh* OECONOMY, As if the Mode of the Monarchical Government, and the Succeſſion to the Crown, Inſtituted in that One Single Nation, was to be the *Pattern* for all other Kingdoms; And that all other Inſtitutions which differ from it, are *Unwarrantable*.

Theſe Writers have read the Nature and Manner of the *Original Conſtitution* of that Kingdom, which in the Firſt Book of *Samuel* is Accurately Deſcribed, *viz.* That the People of *Iſrael*, affecting Innovation, Addreſſed Themſelves to *Samuel*, Complaining of the *Male Adminiſtration* of his Sons or Miniſters, and ſaid, Make Us a King to Judge (or Govern) Us, like *All the Nations*.

This Surprizing Demand brought into *Samuel*'s View, Three Things.

I. The former STATE of this People, under the *Pharaohs* Kings of *Egypt*.

II. Their preſent STATE in the Land of Promiſe.

III. The STATE They were Deſiring to Enter into.

AS to the Firſt; That *Egyptian* STATE appeared to be Miſerably **Slavish**; for this People were, by thoſe *Egyptian* Kings, oppreſſed with Intolerable **Servitude**; Their Men being forced to make Bricks *without Straw*, And their Children, like Common *Inſects*, were *ſtifled* in the very *Birth*.

Under which **Oppreſsion** They Groaned and Cryed unto the Lord, And He heard them, and by a Series of Miraculous Proceedings, brought Them out of that Houſe of **Slavery**, Placed Them in a Land abounding with Plenty, Gave them Great Subſtance in Propriety, and made Them a *Free and Sovereign People*.

AS to the Second (*viz.*) their preſent STATE and Condition, Their Liberty was ſuch, That every Man ſate under his own

own Vine, and did what was Right in his own Eyes; And at all times (when they Abſtained from Idolatry) They had God for their Conductor, and Liberty to Inquire of him, as their *Oracle*, in all Difficulties; And he was pleaſed to Give them Plain and Poſitive Anſwers and Directions how, in all Occurrences, to be Succeſsful and *Victorious*.

AS to the Third, (*viz.*) The STATE they were deſiring to enter into; That appeared in this View, That if they would have a King like All the Nations (of which *Egypt* was one) Then they muſt be in the like Subjection and **Slavery**, as the People of thoſe Nations were; which differed not from the **Bondage** that was *Egyptian*: Whereas if they had Deſired a King to Protect and Defend their Liberties and Properties, the Requeſt had been Commendable: But, above all; *Samuel* Conſidered, That God, when he Deſcended in Thunderings and Lightenings on Mount *Sinai*, had, in all the People's Hearing, *Declared* himſelf to be the God of *Liberty*, and would be known by that ATTRIBUTE, intimating to them, that he was that God who had Brought them out of the Houſe of **Slavery**, and had Broken the Bonds of their Yoke, and made them go Upright: As if he had ſaid, Whereas ye were poor SLAVES, Bowed down under the Weight of *Egyptian* TYRANNY, It was I that Broke the Power of your Cruel Maſters, and Reſcued you from under their Oppreſſion, and made you a *Free People*. *Lev.* xxvi 13

The good Prophet was therefore Amaz'd at this People's Importunity, not only to reject the Greateſt Bleſſings God could Give, or they Enjoy, *viz.* *Liberty* and *Property*; but to return again into **Slavery**; The Good Old Prieſt and Judge, being averſe to *Bondage*, Brought the Matter, as an Affair of the moſt Nice and Difficult Nature, before God their Great Benefactor, and Enquired, What Anſwer he ſhould give to a Demand ſo Unaccountable? and he was, by God himſelf, in his Great Goodneſs, *Inſtructed* to Proteſt ſolemnly unto the People, and ſhew them the Manner of ſuch a King as they deſired ſhould reign over them; which was, in Effect, to tell them, That the Power of ſuch a King as they Deſired, *viz.* Of a King like all the Nations about them, would be **Arbitrary**; And that the Liberty of their Perſons, and the Property of their Eſtates, would neceſſarily fall under his Abſolute Will and Diſpoſal, after the Manner they had formerly been in *Egypt*.

Samuel,

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Samuel, according to his Inſtructions, told all the Words of the Lord unto the People that asked of him a King, and ſaid, *This will be the Manner of the King that ſhall reign over you, He will take* (*i. e.* He will have Power to take) *Your Sons for his Chariots, and to be His Horſemen, and to run before him; He will ſet the People to Ear his Ground, and Reap his Harveſts; He will take your Daughters to be Confectioners, Cooks, and Bakers; He will take your Fields, your Vine-Yards, and Olive-Yards, even the Beſt of them, and Give them unto his Servants* (*i. e.* his Favourites); *He will take the Tenth of Your Corn, and Wine, and of your Sheep,* (*i. e.* Impoſe Taxes) *and Give to his Officers and Servants; He will take your Servants, your Aſſes, and your Goodlieſt Young Men, and put them to his Work, and ye ſhall be his Servants; and that when they ſhould Cry out,* (as Doubtleſs they would Cry, or have Reaſon to Cry out) *becauſe of ſuch their King,* that is, by Reaſon of ſuch their Bondage and Servitude, *the Lord would not hear them.*

This Proteſtation or Warning, was, in all reſpects, Solemn, and was, Doubtleſs, Given in Great Kindneſs and Condeſcenſion to open the People's Eyes, and Diſſuade them from ſuch a *Wanton Parting* with thoſe Good Things God had Given them.

The Argument was the moſt forcible that was ever Urged; for it Demonſtrated, That the Conſequences of ſuch their Behaviour, if they proceeded, ſhould be a total **Excluſion**, not only from thoſe Bleſſings of Liberty and Property; but even from *Liberty* to Pray for a Reſtoration or Deliverance; It being as Vain as Sinful, to make ſuch Prayers as God had declared he would not hear.

And yet the Stubborn People were deaf to all Perſuaſions, and Continued Wilfully inconſiderate, and ſaid, NAY, But We will have a King over us, That We may be like *All the Nations* (*i. e.* be a People without Liberty or Property).

This Reply was Plainly an *Original Contract*, Promiſing PASSIVE OBEDIENCE, without Reſerve, or Unlimited NON-RESISTANCE; or, in other Words, A Rejecting of the Bleſſings of Liberty and Property: Which Wantonneſs was afterwards Imputed to this People for *Wickedneſs*.

Upon

Upon theſe Terms, and with full Notice that ſuch a King would have in him the whole *Legiſlative* and *Judicial Power*, and that his **Arbitrary** Will and Pleaſure would be the *Law* or *Meaſure* by which his Government would be Adminiſtred; The FIRST KING of *Iſrael* was by God, Choſen and Appointed, and by that People Submitted to and Accepted; And *Samuel* Wrote this *Conſtitution*, or the Manner of the Kingdom, *i. e.* the Form of Government in that Country, in a Book, and laid it up before the Lord, as a TESTIMONY to Witneſs againſt a Nation ſo Inſenſible of the Value of *Freedom*.

The Regal Government of the Kingdom of *Iſrael* being thus founded in the Terms of this *Original Contract*, By which was veſted in the Crown, the whole *Legiſlative* and *Judicial* Authority, and in which the King's Abſolute **Power** over the Perſons, the Lands, and the Goods of the People, was ſo plainly Expreſſed and Stipulated: Theſe Writers of the Later Sort have read of the **Arbitrary** Acts of Government which the *Iſraelitiſh* Kings Exerciſed, without being Cenſured for them in any Hiſtory, *as Illegal or Unjuſt*; And, among others, that *Saul*, the Firſt King, did, by *Doeg* the *Edomite*, his Capital Herdſman, Slaughter, not only the High-Prieſt *Ahimilech*, and with him 85 other Prieſts; But alſo all the Men, Women, Children and Sucklings of *Nob*, the City of the Prieſts.

They have alſo read of Two Acts of **Arbitrary** Power in the Calling *Solomon*, the Second Son of *David*, to the Throne of *Iſrael*; The one Practiſed by King *David*, and the other by *Solomon*; Which to us are repreſented as Acts of mere Human Policy and Power, *viz.* That when King *David* was Grown Old, and, in a manner, Bed-ridden, there roſe up at Court *Two Parties* Contending for the *Succeſſion*.

Firſt, The Party of *Adonijah*, King *David*'s then Eldeſt Son, who being a very Goodly Man, and having the Right of Primogeniture, He ſet up an Hereditary Right, which he fancied to be *Indefeazible*, and to be therefore Heir Apparent, and Right Heir to the Crown; His Claim was ſupported not only by *Joab* the Renowned and Victorious Captain General of the Hoſts of *Iſrael*, and all the Men of *Judah*; But alſo by the *Arch-Biſhop*, or *High-Prieſt*, Abiathar; And one would have thought that this Party, Armed with ſuch a Right, and Supported by ſuch Partizans, had been *Invincible*. But,

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Secondly, THE OTHER PARTY at Court, which for ſome Years had had the ſole Management and Diſpoſition of all Affairs, and had the Royal Ear, and free Acceſs to the King, was headed by the Favourite Second Wife *Bathſheba* Mother of *Solomon*, aſſiſted by the *Sagacious Nathan* the Prophet, and by *Benaiah* the Captain of the Guards, *&c.* The Hiſtory relates, That *Nathan* foreſeeing what would be the Fate of *Bathſheba*, and her Son *Solomon*, and of their Party, for many Reaſons, If *Adonijah*, the Eldeſt Son, ſhould Aſcend the *Throne*, gave her Counſel how to ſave her own Life, and the Life of her Son *Solomon*, by putting into her Head, a Politick Contrivance, *viz.* To go in and Claim of the Old King, not only the Performance of his *Promiſe* made in Private, and not Publickly known to the Princes and States of the Kingdom; but to inſinuate, that when his Majeſty ſhould Sleep with his Fathers, She, and her Son *Solomon* ſhould be Counted Offenders; Aſſuring her, That He, *Nathan*, would come in immediately after (as it were by Accident) and Confirm her Words. This Counſel had Succeſs, for King *David* did **Arbitrarily**, but by Virtue of his Legiſlative Authority, and therefore *Legally*, Diſinherit *Adonijah*, his Eldeſt Son, and gave the Crown to *Solomon* his Son by *Bathſheba*.

AS to King *Solomon*, whoſe Title was only founded on his Father's *Donation*, He having the Sole Legiſlative and Judicial Authority, did, as an **Arbitrary** Prince, commiſſion *Benaiah*, the Captain of his Guards, to ſlay not only *Joab*, the Greateſt Nobleman and Captain of his Kingdom, but alſo his Eldeſt Brother *Adonijah*, without any Tryal or Examination, whether they were Guilty, or not, of Crimes worthy of Death: For *Adonijah* (for ought appeared) had not Offended King *Solomon*, otherwiſe than for having the Right of Primogeniture; nor *Joab*, than for adhering to him as Heir Apparent to the Crown.

Theſe **Arbitrary** Acts therefore of theſe Kings, by Virtue of their Sovereign and Abſolute Power, were, for ought appears, *Lawful*, and not Prohibited or Reſtrained by any *Conſtitution* or Law of their Kingdoms; For the People Acquieſced, and the Blood ſhed was never Imputed as an Offence to King *Solomon*; But, on the Contrary, it is ſaid, The Kingdom was Eſtabliſhed in his Hands: And as to the forementioned Inſtance of King *Saul*, It is not found amongſt his Acts of Miſgovernment, That his

his Killing the Prieſts was ever laid to his Charge. Theſe Gentlemen Obſerve, That theſe Homicides are Rehearſed as Acts of an Abſolute **Arbitrary** Government, not in any Sort Accountable to, or Reſtricted by, any *human Law* or Power; And that the Objects were indeed to be lamented as Unfortunate, but not as Injured; neither was the *Sovereign Magiſtrate* to be, for them, accounted Culpable or Unjuſt.

Theſe Gentlemen have likewiſe further obſerved in the Old Teſtament, What paſſed between the Prophet *Daniel*, and the Great King *Nebuchadnezzar*, and his Son or Grandſon *Belſhazzar*, *viz.* That though *Nebuchadnezzar*, being the Rod of God's Anger, had, with Cruelty enough, demoliſh'd, and burnt *Jeruſalem*, and torn the *Jewiſh* Nation up, as it were, by the Roots, deſtroying the greateſt Part with the Sword, and Carrying the reſt into Captivity, yet it may be preſumed, That afterwards He Treated the Captives with ſome Humanity; For when *Daniel* was about to Interpret the Dream, in which he Saw Bitter Things, The Prophet was troubled, and ſaid, *The Dream be to them that hate thee, and the Interpretation thereof to thine Enemies.*

But when the ſame Prophet was required to Read, and Expound the Writing on the Wall, which had ſo Affrighted King *Belſhazzar* (a Vain and Effeminate Prince) that his Countenance changed, the Joints of his Loins looſed, and his Knees ſmote one againſt another; the Captive *Jew*, being invigorated with the Divine Spirit, Treated him with a Couragious Indifference, by ſaying, *Let thy Gifts be to thyſelf, and give thy Rewards to another*; adding, with a Biting Reproof, *O thou King, the Moſt High God gave* Nebuchadnezzar, *thy Father, a Kingdom, and Majeſty, and Glory, and Honour*; *And for the Majeſty he gave him, All People, Nations and Languages Trembled and Feared before him: Whom he would he ſlew, and whom he would he kept alive, and whom he would he ſet up, and whom he would he put down*; *But when his Heart was lifted up, and his Mind hardened in Pride, he was* **Depoſed** *from his Kingly Throne, and they took his Glory from him: And thou, his Son, O* Belſhazzar, *haſt not humbled thine Heart, though thou knewеſt all This.*

From theſe Relations it is Evident, That the Power of the Eaſtern Kings was Unlimitted and **Arbitrary**, and the Condition

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dition of their Subjects deplorable; For having Degenerated from the Condition of Freemen, and put their Lives and Estates under the Power of their Fellow Creature, they were Slaughtered as Common Animals, without imputing to their *Sovereign Lords* any Blame; For *Volenti non fit Injuria.*

And This is further Evidenced, by what King *Solomon* wrote, when he advised Care to be taken by Subjects in their Behaviour towards their Prince; For, saith he, *The King doth whatsoever pleaseth him, and where the Word of a King is, there is Power*; Intimating, That all Power, both Legislative and Judicial, did Center in the Absolute and **Arbitrary** Will and Pleasure of those Eastern Monarchs: The Contemplation whereof was sufficient to render them *Terrible*, and the bare Appearance or Suspicion of an Offence, *Capital.*

Thus are Matters related in the Old Testament; And this **Arbitrary** Power is Emphatically Exemplified in the Answer which the Royal Judges of *Persia*, to whom the Interpretation of the Law belong'd, gave to *Cambyses* (Son of the Great *Cyrus*) King of the *Medes* and *Persians*; Who, having a Mind to Marry his Sister, and Doubting of the *Abomination of the Incest*, Enquired of the Judges (as if he were willing to be Limitted by the Law) Whether they had any Law that would allow the Marriage? To which they answered, That they had indeed *no Law* that permitted a Brother to Marry his Sister; But they had a Law which **permitted** the King of *Persia to do what he pleased.* This Answer pleased the King, and he Marry'd his Sister; Which amply Represents that People's **Misery**; For if it had pleased the King by Murder or Torture, to take any Man's Life; or by Imprisonment, to take his Liberty; or by Violence, to take his Estate or Property, The *Law*, it seems, made such his *Pleasure*, Just and Unblameable.

In the New Testament, these Gentlemen find the *Inoffensive Demeanor* of our Lord *Jesus Christ*, towards the Western or *Roman* Emperors, under whose Government He was born, and Promulged the Gospel; Which Emperors, in Imitation of the Eastern Kings, *Killed, Saved alive, made Rich or Poor whom they would*; For *Augustus Cæsar* (after he had rooted up the *Roman* Liberties) Over-aw'd and Coërced the Senate and People of *Rome* to pass a *Decree*, Whereby they set him above, and freed him from the Obligation of all Laws, and gave him a

Power

Power to do all Things in the Government, according to his Abſolute Will and Pleaſure, Thereby Rejecting the Rights and Freedom of *Romans*, and Electing the Condition of the moſt Abject of the *Aſiatick* or Negro Slaves; This Part of *Auguſtus*'s Conduct diſcovers the *Source* from whence (in his Apprehenſion) he Derived the *Plenitude of his Power*.

And theſe Gentlemen have alſo read, the General Directions preſcribed by our Saviour and his Apoſtles, touching the Obedience of Subjects, and their peaceable Behaviour towards their Governors; and from thence (having loſt themſelves in Vaſt and *Undigeſted Notions* of the Regal Power) they have Inferred and Inculcated, That **Arbitrary** Power is as well the Right of *Britiſh* Kings, as it was of the *Jewiſh* or Eaſtern Kings, or of the *Roman* Emperors; And that *Paſſive Obedience* without Reſerve, and Unlimited *Non-Reſiſtance*, are therefore the Indiſpenſible Duty of *Britiſh* Subjects; And from theſe Premiſes they argue, That the REVOLUTION, and the Subjects Aſſiſtance of, and Concurrence with, the Prince of *Orange* in the Year 1688, by which the then **Arbitrary** Government was Diſturbed, and Removed, and that *Prince* was called to the Throne, were *Illegal* and *Unjuſt*; And from this Erroneous Courſe of Reaſoning, proceed many Peoples *Diſtemper'd Notions* of the preſent Government.

Whereas the INSTITUTION of the *Iſraelitiſh* Kings, and their Power, was ſo far from being a *Pattern* to *Great-Britain*, That it was not a *Pattern* to their own Neighbouring Kingdoms; but the Neighbouring Kingdoms, as they were *Prior* in Time, and more Antient, ſo were they a *Pattern* to the *Iſraelites*; For the Text ſays, *When Thou* (meaning the People of *Iſrael*) *ſhalt ſay, I will ſet a King over me, like all the Nations that are about me, Thou ſhalt in any wiſe ſet him King over thee, whom the Lord thy God ſhall Chooſe*: From the Particularity of which Command, and other Concurrent Circumſtances; It may be Inferred,

Firſt, That the People of the Nations round about *Iſrael*, Did ſet over them ſuch Kings as they themſelves *Did Chooſe*.

Secondly, That the POWER which thoſe Nations gave, and with which They did Inveſt their Kings, was Abſolute and **Arbitrary** (*viz.*) a *Power* to Kill, Enrich, and Impoveriſh

Case 9
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whom they would; and therefore no *Hereditary Rights*, or other Rights in thoſe Kingdoms, Could be *Indefeazible*; For all Rights being Involved and Included in the **Abſolute** Will and Pleaſure of the King, who was the Lawgiver; the *Hereditary Right* of Succeſſion to his Crown, muſt therefore be *Defeazible*, by a Law of his Making; And thoſe Kings might *Legally*, and often Did, without Regard to Primogeniture, paſs by the Eldeſt, and appoint their Younger Sons to *Succeed*; a pregnant Inſtance whereof, was the Caſe of *Solomon*; For which Reaſons, 'tis Improbable, the Eaſt ſhould give Riſe to the Notion of an *Indefeazible Hereditary Right to Crowns.*

Thirdly, That no other *Nation* in the World, ever had ſuch a Favour as the *Iſraelites* had, Conferred upon them; (*viz.*) That when they would Set over them a King, God himſelf would pleaſe to point out and name *the Man.*

Fourthly, That the Kings of the Neighbouring Nations were in all Things (Except the Choice) a *Pattern* to the *Iſraelites.*

Fifthly, That it is a Wild Imagination to ſay, That the *Iſraelitiſh* Kings, who were themſelves, in their Power, *but Copies, and not Originals*; ſhould, either in their Election or Power, be a *Pattern* to *Great-Britain.*

It is Obſervable, That the *Aſiaticks*, whom thoſe Gentlemen would in all Things *Imitate*, have, in all Ages, been Addicted, more than *Europeans*, to the Principles of *Abſolute-Monarchy-Men*; For no Man can ſhew in *Aſia*, any One Government, where the Peoples Liberty and Property were by Laws Secured or Defended, Except only that One *Nation* of *Iſraelites*, before they deſired a Monarchical Government; Who, When they Deſired a King, like the Nations Round about them, were told the **Manner** of ſuch a King, and what he would do; Which in the long and pompous Reign of *Solomon*, was literally Verified; For that King Appointed Twelve Officers over the Land, Each of whom, was to find Proviſions for the King's Table, in his Month; And It is Recorded, That theſe Proviſions ſo furniſhed, Amounted by the Year, Computing according to the *Hebrew* Meaſure, to Two hundred Seventy-two Thouſand, and Two hundred Buſhels of Flour; Ten thouſand Nine hundred and fifty fat Oxen; and Thirty-ſix thouſand

Five

Five hundred fat Sheep; Beſides Harts, Roe-Bucks, Fallow Deer, and fatted Fowls; and Beſides Barley and Straw for Forty thouſand Horſes: And therefore, when the Princes and People met *Rehoboam, to make* him King, They might Reaſonably Inſiſt (as they did) to have ſome Alleviation of their Burdens, and ſome Redreſs of their Grievances; And that the **Arbitrary** Power of the King might, by Limitations, be in ſome Sort bounded; which Overtures being *Rejected*, Ten of the Twelve Tribes **Rejected** *Rehoboam*, and Inſtituted and Framed to themſelves a new *Conſtitution* or *Government*; or rather Reſtored Themſelves, in ſome Manner, to their *Original* Liberty and Property.

In the Terms whereof, as *Jeroboam* was, with the Regal Dignity Inveſted and Declared King, So the *Antient Property* of the People in their Lands and Goods, was provided for, and ſecured againſt the Royal Invaſions, *i. e.* Againſt the Power of taking from them *their Vineyards*, &c. For when *Ahab*, King of *Iſrael* grew Sick with Coveting *Naboth*'s Vineyard; He being Reſtrained by the *Conſtitution*, Dared not to Wreſt from *Naboth*, that Piece of Ground, by an open and violent Expulſion; But reſorted, firſt, to the Temperate Methods of Acquiring it by an *Equivalent* for the Value in Money, or in other Lands; And when thoſe failed, Then Did his Queen *Jezebel* reſort to the *Wicked Means*, of gaining it by Colour of that *Law*, To the Inſtitution whereof, *Naboth* himſelf had Conſented; But how fatal that **Breach** proved to *Ahab* and his Family, needs not to be here repeated; But thus much may be obſerved, That God's Terrible Puniſhments for the **Breach**, are an Evidence of his Approbation of that *Conſtitution*, which had reſtored to the People their former *Freedom*: The Sweetneſs therefore of *Liberty* and *Property*, which the *Iſraelites* enjoyed, under that *Reſtored Conſtitution*, is the Strongeſt human Reaſon, why the Ten Tribes never again deſired to return under the **Arbitrary** Government of the Kings of *Judah*; But theſe Gentlemen Care not, that the RECOVERY of the *Iſraelitiſh Liberty* and *Property*, by this new Conſtitution under *Jeroboam*, ſhould have any Paraphraſe or Commendation, or ſo much as Remembrance, though the Finger of God appeared more viſibly in this REVOLUTION, than in moſt that ever happened.

As to the Demeanor and Precepts of our Lord *Jesus Christ*; It is obvious, that he did not Meddle with the Titles of Earthly Kings; nor Prescribe any Rules, whereby it might be known which were the *Rightful*, or which the *Wrongful* Kings of this World: For if that had been any Part of his Business, the Rights of the *Roman* Emperors *Julius Cæsar* and *Augustus* must necessarily have fallen under his Examination and Censure; Every One knows, that their Governments were built upon the **worst Foundations**; For, being born Subjects to the Freest and Bravest STATE and People under the Sun, They, in **Breach** of their Faith and Allegiance, Aspired to be perpetual Dictators and Emperors, and, in *Defiance* of all Laws Human and Divine, Waded through Seas of Blood, Murders, Rapine, Treachery and Perfidy, to Enslave their Fellow-Subjects, and to Usurp and Wrest from their MASTERS (who Employed and Trusted them) that Government and Power which they themselves had Sworn to Obey and Defend.

It is plain, That He left all the *Potentates* of this World and their Subjects, to Decide their several Rights, by the *Temporal Laws* of each Nation, which they had Agreed on, or should Agree on, and Institute amongst themselves: And never Intimated, what FORM of Government was most Convenient or Eligible.

The Kingdom of Christ, which he and his Apostles Erected, was quite of another Nature: It was a *Spiritual Kingdom*, whereby he was to Reign in the Minds and Hearts, not only of all People, but of *all Kings too*; For *Kings themselves* were, Equally with the meanest People, to be *Subjects* of his Kingdom; And therefore he Compared his Kingdom to a small Piece of Leaven, which being hidden in a Quantity of Meal, ferments by little and little, 'till the whole is Leavened; Intending, that his Doctrines, being received and pondered in the Minds of Men, should, by the Secret and *Powerful Influence* of the Divine Spirit, Convince Men of the Christian Verity, and Subdue their Understandings, and Convert them to become Members of his Spiritual Dominion, Without Regard to what Earthly Kings they were Subject to; There being nothing which this Heavenly King did so Expressly Prohibit and Exclude from the Propagators of his Doctrine, *as Pride, and Aspiring* after Riches, Power, and Dominion, and *Lording* it over his Subjects; And much

much leſs were they to *Lord it over* the Kings of the Earth, *Luke* xxii. *ver.* 25, 26.

From This Account of *Scripture Kingdoms*, It is Obvious, That ſuch Gentlemen as take their Meaſures of Temporal Governments from the Hiſtory or Precepts of the Scripture, and Inſtil into the People, Notions, That our *Britiſh Kings*, by Virtue of any of the Rules there preſcribed, ought to be Abſolute or **Arbitrary**, or to Inherit the Temporal Crown of this Kingdom of *Great Britain*, by a *Divine Indefeazible Hereditary Right* of Succeſſion, Do aſſume, without Grounds, and, as Miſtaken Guides, Impoſe on, and Miſlead the People, and Cauſe them to **Err**. For, there cannot be found either in the Old or New Teſtament, any Deſcription of the particular Family or Race of Men, which are, or ever were Kings of this Nation; Or of the particular Laws of this Land, by which *Right or Wrong* are to be meaſured between the Crown and the Subjects of *Britain*; or of the *French* Conſtitution, called the *Salique-Law*, which Excludes the Proximity of Blood, and the Primogeniture of the Females, and *gives the* French *Crown* to the Males: or of the Stipulations of *Germany*; by which the *Emperor's Election*, and the Rights of the ſeveral Princes of that Country, are to be determined: Neither can theſe Gentlemen *Demonſtrate*, when, or by whom, or how, or by what Authority, the Suppoſed *Hereditary Right* of Succeſſion to the *Britiſh* Crown, was made *Indefeazible*.

Theſe Erroneous Notions, nevertheleſs, have ſo Swell'd many People's Diſaffection, that they Imagine all Kings to be Wrong-Doers, who have not ſuch a Right, as theſe Gentlemen are pleaſed to call *Hereditary* and *Scriptural*; and the Diſaffection becomes the more fixed, Becauſe the Proſpect of a long Train of *Pretenders*, nouriſhes, and upholds their Hopes and Expectations; Foraſmuch as when the preſent *Exploded Pretender*, and his Iſſue, ſhall fail, Their Suppoſed Right, will, as they ſuppoſe, Deſcend to the King of *Sardinia*'s Son, and from him to the preſent *French* King, and from him to the *Spaniſh* Prince of *Aſturia*'s; and therefore they Encourage one another, that their Pretences will acquire Strength, as their *pretended Right* Gradually Deſcends.

This Party Comfort themſelves with the Viciſſitude of human Affairs, and hope that the Riches of their future Pretenders,

Eſpecially if they aſſume the *Pretenſion* of being *Proteſtants*, and being Armed with what they call an *Indefeazible Hereditary Right*, will at laſt Gratify their Averſions, and Crown their Expectations.

This being the **Error** of Great Numbers of People, It comes to be a Subject worthy of the moſt Learned and Beſt-Affected, to Exhibit to the World ſuch a *Legal Syſtem* of the *Britiſh* Government, as may *Subſiſt* without Arguments ariſing from *Convenience* or *Force*, which prevail no longer than till that *Force* can be removed, by a Greater; or 'till that *Convenience* ſhall be Succeeded by a better; and which will Engage the Reaſoning World, and furniſh Weapons to the Friends of this Conſtitution, Conſiſting of ſuch plain and undeniable Facts and Truths, and of ſuch Conſequences unavoidably flowing from them, as may *Convince* the Adverſaries Judgments, or drive them to the *darkeſt Evaſions*.

The Advantage therefore, of an Attempt of this Kind (if Effectual) will be ineſtimable; Becauſe though theſe Diſpoſitions of Mind, in Multitudes of People, can by no human Policy or Power be preſently *Removed* or *Expelled*, yet by ſuch a plain and Intelligible *Repreſentation* of the Conſtitution, the Source and Spring of Succeſſive and Perpetual Convulſions and Struggles within, and of Apprehenſions of Invaſions from abroad, will, by Degrees, be Dryed up, or, at leaſt, utterly Enervated.

The Subject Matter of this Eſſay has, from long Antiquity, been Eſteemed, the Higheſt and moſt Uſeful of *All Human Learning*; as may be Collected from the Opinion of *Nicocles* King of *Salamine* (a ſmall Territory in *Greece*) for whoſe Sake *Socrates* compoſed Two Orations, in One of which he propoſed *the Rights of a King*, and his Duty towards his Subjects; and in the other, *the Rights of Subjects*, and their Duty to their King; of which *Nicocles* Expreſſed an uncommon Approbation. The *Undertaking* therefore ought not only to be Attempted, for the Publick Utility; but the Attempt itſelf ought to carry in it a Force and an Energy equal to its Importance: And though others, who want no Qualifications for ſuch an Undertaking, have done nothing towards it, the Writer has Adventured; hoping, however, he ſhall not ſtand alone, foraſmuch as he hath Commenced a Courſe or Method from which the Argument may, by the Learned in the Law, and

and in Hiſtory, and in Parliamentary Proceedings, be forcibly advanced.

But ſome will Object, that though this Eſſay *Demonſtrates* the Right of our preſent Supreme Lord and Governor to be *Paramount* all other Branches of the Royal Family; yet the Tenor of it is Unſeaſonable, and not at all Wanted: foraſmuch as nothing is, to moſt Governors, more Agreeable, than to be Addreſſed with Plenitude of Power, nor more Diſagreeable, than to be put in Mind of *Reſtrictions*.

In Anſwer to which, it is moſt Certain, That the **Objection** is Strong and Diſcouraging; but then it muſt be owned, That it is Tempered with *Fallacy*, and that the Inſincerity has brought not only the Abuſed People, but the Flattered Kings themſelves, into the miſerable Circumſtances in this Eſſay related.

And it is as certain, That the JUSTICE of the preſent Eſtabliſhment, cannot be better maintained, than by ſhewing the *Injuſtice* and Wrongs of that Government, which (to make Room for it) was *Diſturbed* and *Removed*; and if that be neceſſary, then it is as neceſſary to ſhew (for the maintaining the *Juſtice* of that Diſturbance and Removal) the Antient Precedents which, in the like Caſes, have been uſed and approved; Either of which, (to wit) the *Juſtice* of the one, or the *Injuſtice* of the other, cannot be meaſured or made appear, by any *Rule*, but by the *Conſtitution*; the Reforming of Contraventions to it, being the *ſtrongeſt Proof* of the Exiſtence and Force of it; in like Manner, as all Happineſſes are by their Contraries beſt Illuſtrated; as the Beauty and Happineſs of Light, cannot be ſo plainly diſcerned, as by the Experience of the Horror and Inconvenience of Darkneſs; nor the Pleaſures of Health, as by the Pains and Sorrows of Sickneſs.

To Meaſure the *Rights of the Crown*, and the *Liberties of the People*, according to the *Legal Standard*, ſo Juſtly and Equally, that the one End of the Scale may not weigh down the other; that is, to render Impartially to the King the Things that are His, and to the People the Things that are Theirs; is a Difficulty, which, *prima facie*, ſeems *Inſuperable*; but the ZEAL Appearing in this Attempt, for the *Eſtabliſhment and Perpetuity* of His Majeſty's Royal Family, and the *Tranquillity* and Happineſs of *Britons*, under their Juſt and Legal Govern-

Government, may (it's hoped) atone for all Defects in the *Undertaking* : In which are Repreſented, more *Surprizing Viciſſitudes* in Government, and Greater, and more Frequent *Convulſions*, Mixed with Fury, Rage, and Bloodſhed, in *the Cauſe of Liberty*, and in the obſtinate *Vindication* of this Conſtitution, and of the Privileges, and Freedom of *Britons*, than are to be found in any other *State* or *Country*.

THE

THE

Britannic Conſtitution:

OR, THE

FUNDAMENTAL FORM

OF

Government in Britain.

DEMONSTRATING

The Original Contract, &c.

THIS Undertaking is not to Exhibit to the World a private or unknown Conſtitution; for a Conſtitution that is not publick and well known, is no Conſtitution. But the Attempt is, to Draw together (as it were into one Map) all the Subſtantial Parts of the *Conſtitution* to be Viewed, as in a Looking-Glaſs: And from thence, to ſhew, That the AUTHORITY of the Lords and Commons Aſſembled at *Weſtminſter*, in the Year 1688, when they Placed on the Throne the Prince of *Orange*, was founded on the *Original Conſtitution, and on the Fundamental* Laws of *Great-Britain*.

And, as the Natural Conſequence thereof,

That the AUTHORITY of thoſe Parliaments which Excluded the Popiſh Branches, and Called to the *Throne*, the preſent PROTESTANT HEIRS (or Branch of the Royal Family) was Legal, well Founded, and Warranted.

Therefore, in the UNDERTAKING are Shewed and Deſcribed,

I. What are the Original *Conſtitutions*, or the Fundamental FORM of Government, in this Nation; and What is the Nature of the **Original Contract** at Firſt Entred into by the King and People; the one to Govern, and the other to Obey; according to thoſe Conſtitutions.

II. The EVIDENCES by which the Original Conſtitutions and Form of Government, and the *Original Contract* to obſerve them, are proved.

III. Divers Inſtances of the **Breach** of this **Original** Conſtitution and *Form* of *Government*, and of the *Original Contract*, to obſerve it, and the Conſequences of them, and the Means by which thoſe **Breaches** were in all Times Repaired.

IV. That from the Whole is proved, That the late REVOLUTION in 1688, and the Diſturbance of **Arbitrary** Power, by which it was Effected, and the PLACING on the Throne the Prince of *Orange*; and the Subſequent Settlement and Limitation of the Crown to the preſent PROTESTANT HEIRS (or Branch of the Royal Family) were *De Jure*, and are Juſtified by the *Fundamental Laws* of *Great Britain*.

V. POLITICAL Remarks upon the whole Syſtem.

CHAP.

CHAP. I.

SECT. I.

As to the Original Conſtitutions, *and the Fundamental Form of this Government, and the* Original Contract *between the King and the People, the one to Govern, and the other to Obey, according to* THEM.

IT is proper here to Diſtinguiſh between the *Original* Forms and Conſtitutions, and the *Original* Contract; The *Contract* is the Promiſe or Oath to *obſerve*; And the *Conſtitutions* and Forms are the Things to be *Obſerved*; The Things to be *Obſerved* therefore, muſt, in Contemplation and Underſtanding have an EXISTENCE, Prior in Time, to the Promiſe to *Obſerve* them; the *Law* muſt be Inſtituted before any Engagement can be made to *Obſerve* it: But when the Conſtitutions and Forms of that Law are *firſt made*, and after that a *Contract* is Enter'd into, to *Obſerve* them; the Words *Original Contract*, and *Original Conſtitutions*, become Synonymous Terms, and mean the ſame Thing.

SECT. II.

THE Propoſition therefore, being, That the GOVERNMENT of this Nation was at firſt founded upon certain *Original* Conſtitutions and Forms Agreed on, and Inſtituted, and upon an *Original Contract* reciprocally Entered into, to Obſerve them, it is requiſite to run the Inquiry into other *Originals*, from which it may be made appear, by whom, and when, and why, the *Original Conſtitutions* and Forms, and the Original

Contract

Contract for the Government of this Nation were at firſt Made and Inſtituted.

In a Matter of this Nature, where the *Uſage* of Specific Forms of Government hath been Conſtant, Clear, and Certain, and the *Commencement* of thoſe Forms is *Antient*, and beyond the Time of Memory, and all *Memorials* of that Commencement have been Loſt; PRESUMPTIONS are of Neceſſity to be made Uſe of, and Allowed; in regard *Preſumptions*, where they are Strong, and in a Manner Violent, and Conſiſtent with the Conſtant Practice and the Natural Courſe of Things; are in other Caſes allowed as *Convincing Evidence*; *Stabitur Preſumptio donec probetur in Contrarium.*

This Method ſeems Reaſonable; For if a Man were to Write a *Deſcription* of ſome Antient *Stadthouſe* or *Townhall*, ſtanding in ſome ſmall Province or large Pariſh, being of an Antique Figure, but Admirable for its *Form* and *Strength*, whereof all the old *Memorials*, in point of Time, of the firſt Building, and of the Builders Names, are Buryed in Oblivion (for which End, *Weſtminſter-Abby* may be taken for an Example); might not ſuch a *Writer* preſume and ſuppoſe, That the *People* of that Country or Place, met together in a Parochial or Provincial *Aſſembly*, and there Debated, Agreed, and Reſolved to Erect ſuch a *Fabrick* as ſhould be a Monument to After-Ages of their Art and Magnificence? And that ſince Every one, partaking of the Honour, was to contribute his Aſſiſtance, in Labour, Skill, or Proviſion of Materials; Each Perſon therefore was to have free Liberty to propound in the Aſſembly, his Sentiments of the *Undertaking*? May not therefore the *Writer* of ſuch a Deſcription, Preſume, That the Length, Breadth, and Heights, as alſo the Number and *Form* of the Pillars, Doors, Windows, and other Ornaments of this provincial Structure, came under the Aſſembly's Debate, and Conſideration? May not ſuch a *Writer* Aſſign Names to the principal Artificers, ſuch as Chief Architects, Maſons, Carvers, and ſuch like Workmen, who Excelled in Skill, and Contrivance? And may not Arguments from the Symmetry, Strength and Beauty of the *Pillars*, and other Parts of the Fabrick, that Continue Viſible and Apparent, be Inferred; That thoſe People were Wiſe and Magnanimous in their Generation, and that the whole *Structure* in the Original Foundation, and Formation of it, was at firſt, and at one and the ſame Time, Modelled and Contrived; foraſmuch as the

Pillars

Pillars (on whom the Subſtance and the principal Weight of it, was ſubſiſted and ſupported) could not be in After-times Introduced and Subſiſted: And therefore, if ſuch *Preſumptions* may in ſuch a Caſe be permitted, *The ſame Liberty of Uſing Preſumption*, may, in the Caſe in Hand, be Allowed.

We find, That the ORIGINAL of all the People in the World, at the Time of the Flood, Conſiſted only of Eight Perſons, *viz. Noah* and his Wife, and their three Sons and their Wifes; And that theſe few, by an Extraordinary Providence, Encreaſed in about one hundred Years, to an immenſe Multitude, too many to continue in one Country: Who were, as one Man, poſſeſſed with a Fear of the World's being again *Drowned*; they, therefore, from the Natural Principle of *Self-Preſervation*, Unanimouſly Reſolved, before they Separated, to build a *City and a Tower*, the Top whereof ſhould reach up to Heaven, to which they might, in Caſe of Danger, flee, and ſave themſelves from another Univerſal Inundation.

But the Divine Providence (having determined to Divide this Multitude into ſmall Tribes, and from thence to Diſperſe them over the Face of the Earth) was pleaſed to *Change* their Speech into many *new Languages*, and, by that Means, to make each Tribe Strangers to the reſt, and all the reſt to them; which *Confuſion* of Languages was the Occaſion, why ſo many Different Names were Given to Noah (the Common Parent of Mankind); *viz. Saturn*, *Prometheus*, *Janus*, *Bacchus*, alias *Noachus*, *Triton*, &c. each Tribe Inventing Names ſuitable to its own Speech.

This CONFUSION had its Effect, and the People of each Language flock'd together, and every Tribe going a Different Way, they ſeated themſelves in Diſtant Parts all over the World.

The PRESUMPTION alſo is ſtrong, That the People ſpeaking the *Britiſh* Language, gathered together, and Travelled to, and in a ſhort Time, Seated themſelves in this Iſland, now called *Great-Britain*, and grew up, and increaſed into a Numerous and Potent People.

There's no Doubt they were then, as People now be, ſome of them Beautiful and Strong, Induſtrious, Frugal, Wiſe, Va-

liant, and Proſperous, and conſequently, abounded in Riches, having Great Poſſeſſions of Lands and Cattle, and as ſuch, having great Fame and Reputation among the People like unto *Abraham* and *Lot*, *&c.* and ſo might be reputed *Nobles* or *Lords*.

Others might reſemble theſe in all the Circumſtances aforeſaid, but did not attain to the ſame Degree of Eminence, Power, Riches, or Reputation, and were therefore called *Commons*.

Others, and that in great Numbers, might be ſtrong in Body, but Idle, Prodigal, Proud, and Envious at the Succeſs and Proſperity of others, and therefore, to Support their vicious Ways of living, they Robb'd, Spoil'd, Impriſon'd, Maim'd, and ſometimes Murder'd the Vertuous and Induſtrious, and plagu'd them with Continual Injuries; the Sea-Coaſts, in all Probability, were Infeſted by Pyrates, and by Sea-Rovers, who lived by *Rapine* and *Plunder*.

SECT. III.

THE Laws of *Nature* prohibited theſe Diſorders, but Wanted Power to puniſh the Breaches, and to prevent the *Confuſions*; And therefore Life itſelf, and Liberty were Precarious, and Property, and Good Poſſeſſions were of *Little Value*; until Means ſhould be provided to Defend them, and to Recover Satisfaction, or Revenge the Injuries and Damages done to them.

For when Men Contended about their Rights, Properties, or Poſſeſſions, and Engaged in Battles as Enemies, Endeavouring to take from, or Spoil the one the other; the *Victor* might deal with his *Captives*, or with the Conquered, as with his Cattle, either to Give or to Sell, or to *Kill them*; the *Talion Law*, being, in Nature, for two Reaſons, predominant; Firſt, Becauſe there was no Power to Controul the *Conqueror*; and, Secondly, Becauſe the Vanquiſhed Adverſary, if he had prevailed, would have done the ſame Thing to him, who, by his Strength or Good Fortune, happened to *overcome*; and therefore the Weaker Part of Mankind was always in Fear, to become a Prey to the *Stronger*.

It is not found, That when God *Formed* the World, he *Formed* any Specifick Government amongſt his Creatures, Except

Except That he Gave to his Creature **Man**; the Power and Dominion over all his other Creatures, both on the Earth, and in the Waters.

And as to *Man*; Although God did not Appoint any Government by one or more Men over other Men, yet, doubtleſs, the Great Creator, whoſe Wiſdom is Infinite, did Intend that there ſhould be a *Government* and *Order* amongſt Men, in Oppoſition to *Confuſion* and Diſorder; but having Given to Man, Rational Faculties as *Eſſential* with his *Being*, he only Implanted the *primary Matter* and Notions of Government, *not as Eſſential*, but as a Habit or Quality, in the Minds of Men, giving to ſome Tribes, Greater Senſe, and a Propenſity to *Liberty* and Freedom, than to others.

The Great Creator created alſo, in a Similar Manner, the *primary Matter* of Iron and Braſs, Embodying them in Stony Subſtances, not Diſtinguiſhable by the Eye from the Droſſy Parts, leaving it to the Wit and Induſtry of Men, to Invent and find out Ways and Means how to Separate and Refine thoſe Metals, from the *Lump of Matter*; and to *form* and ſhape out of thoſe Metals, not only *Veſſels* for Uſe and Convenience, but *Weapons* and *Inſtruments* for Offence and Defence in War; which may be Accounted a *Secondary Formation* of the Creatures of Iron and Braſs.

So, in like Manner, God left the *Secondary Formation* of Government to Men, whom he had endued with Reaſon and Underſtanding, to Chuſe, and Contract, and Inſtitute amongſt themſelves, what *Form* of Government would beſt ſuit with each Nation's Genius and Inclination.

SECT. IV.

THIS being theCaſe, the **Preſumption** alſo is ſtrong, That Neceſſity cauſed the People of this Nation, purſuant to the Natural Freedom Allowed by their Creator, to Convene themſelves together in a GENERAL ASSEMBLY, to Debate, and Reſolve, and take proper Meaſures to redreſs thoſe *Confuſions*, and to provide ſome Remedy againſt their *Inſecurity*; and that in ſuch *Aſſembly*, they Unanimouſly Contracted, Agreed, Reſolved, and Statuted, That ſome **Form** of Government, by which the Virtuous might be Protected and Encouraged, and the

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the Vicious Puniſhed and Reſtrained, ſhould be Framed, Ordained, Erected, and Inſtituted, To the End the Juſt *Laws of Nature* might be Obſerved and Executed.

The next Things to be Inquired of, are, What was that *Original* **Form** of Government or Conſtitution, agreed on, and Inſtituted for the Government in this Nation; and if we may Judge of the *Tree*, by its Fruits, or of the *Cauſe* by the Effects, every one muſt, from the *Form* of Government, or the Conſtitutions themſelves, Conclude, that this *People* was a Wiſe and Underſtanding *People*, and that a Great Share of the Divine Spirit was Imparted to them.

Here it muſt be Obſerved, That there was in this Aſſembly, *One Man*, in the Flower of his Age, who Excelled the Reſt in Beauty, Strength, Underſtanding, Eloquence, Courage, Coolneſs in Argument, Provident Foreſight, and Sagacity, and Equalled any of them in Riches and Power, and ſo might be accounted a Lord, or Nobleman; his Name was *Britannus*.

SECT. V.

THE FIRST Motion in the *Aſſembly* was made by *Britannus*, who Repreſented the Inconveniences Accruing from *Inſecurity*, and the Great Conveniences of Providing a publick SECURITY for Mens Lives, Liberties, Properties, and Freedom in Trade; and that ſuch a *Security* was only to be made by a well-framed **Government**, and that the *Subject Matter* of Government might be Compared to *Clay* in the Hands of a Potter; out of which might be *Formed* a Government, in ſuch a Shape and Figure, as would be moſt Uſeful and Honourable; and therefore he propounded to the Aſſembly, That a *Government* ſhould be Ordained, Statuted, or Inſtituted, by which every **Individual Perſon**, without Diſtinction, whether High or Low, Rich or Poor, ſhould, by Virtue of it, and under its Protection, equally have, and be Intitled to have and enjoy, a *Preſervation* or Security of their Lives, the Liberty of their Perſons, a *Property* in, and the ſole Right in, and *Power* over their Lands, Goods, Moneys and Poſſeſſions, and a *Freedom* of Trade: **That** no Perſon ſhould be Impriſoned, Diſſeized, Outlaw'd, Exiled, or any Way Deſtroyed, but by the *Forms* or Rules to be Inſtituted by this Conſtitution; **That** *Juſtice* ſhould not be Denied, or Sold, or Delayed to any Man, **And that**

that every Perſon, whether Rich or Poor, ſhould have an *Inheritance* in theſe Liberties, Properties and other Privileges hereby Inſtituted and Ordained, *Deſcendible* to their Poſterity; and that the ſame ſhould be called *Freeholds*, and the Common Right, or Common Birthright and *Hereditary Privileges* of this People; And that every Perſon might Defend himſelf and his Poſſeſſions againſt Injuries and Wrongs; Adding, That *Privileges*, which might not be Defended, were no *Privileges*, but Non-Entities.

Britannus Introduced himſelf into the meaneſt Underſtanding, by Repreſenting, That the Notion of Property was a *Primary Quality*, interwoven in the very Origination of human Nature, *i. e.* That each Man ſhould be *Naturally Propenſive* to appropriate to himſelf, and Aſſert his Right in his own Poſſeſſions and Goods, in Oppoſition to all others that ſhould Attempt to take them from him; And that no Man would Labour to Acquire, without Hopes to Enjoy; and therefore he Urged, That Property was the Incentive to Induſtry and Emulation, and made the *Difference* between the Idle and Laborious, the Frugal and the Prodigal; and that without it, that Spirit and Inſtinct, which made Men ſtrive to Excel one another, was planted in human Nature to very little Purpoſe; and as Property was the firſt Motive to Acquire, ſo it was the Principal Support of human Power and Greatneſs: Many Illuſtrations he added, and amongſt others, That *Property* cauſed the firſt Motions of Nature: For in the *Beginning*, as ſoon as there were two Men capable of Occupancy, of diſtinct Goods, and of the Diſtinction between *Meum* and *Tuum*, the natural Propenſity of acquiring *Property* firſt appeared; for the One, to acquire Property, took to himſelf Ground proper for Gardens and Corn-fields, and till'd it, in order to gain Profit by the Fruits it produced; the other took to himſelf Sheep and Cattle, and choſe out proper Paſtures to feed them, and became a Shepherd to preſerve them, in order to gain Profit by their Increaſe and Fatneſs, as was Evident from the Caſe of *Cain* and *Abel*; for they being the Two firſt Men capable of that Diſtinction, brought before the GREAT CREATOR, Offerings of Thankſgiving out of the Increaſe of each one's *Property*, *viz. Cain* brought of the Fruits that grew up from the Earth, by him tilled; and *Abel* brought of the Firſtlings of his Flock, which were by him fed and preſerved, and God's Acceptance of *Abel*'s Offering diſpleaſed *Cain*; which proved, That *Nature* Inſtituted in the Beginning a diſtinct *Pro-*

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perty and Ownerſhip (to wit) in *Cain* of the Fruits, and in *Abel* of the Flocks; for elſe, if all Things were in Common, and each had as much Right as the other, in every Thing; *Cain* might have claimed the Benefit of *Abel*'s Offering as well as *Abel* himſelf, and the *Acceptance* of *Abel*'s Offering had been the *Acceptance* of *Cain*'s, becauſe *Cain* would, in that Caſe, have had as much Right in it as *Abel*; the Conſequence whereof would be *Confuſion*.

Britannus proceeded, and ſhewed, That this Natural *Right* of each Man in his own *Property*, Inferr'd another Natural *Right* Inherent, *viz.* A Right not only to *defend* his Property, but to Challenge and Recover **Satisfaction** for Injuries done to it: For when *Property* is Admitted, *Nature* itſelf Dictates, That it could not be Juſt or Righteous for *Abel* to Enter on, or Deſtroy the Fruits of the Ground tilled by *Cain*; Neither could it be Juſt or Righteous for *Cain* to Kill or Deſtroy the Sheep which *Abel* kept and preſerved; or, which is all one, to Deſtroy the Paſtures that fed them: and therefore, if one of them had forcibly Invaded or Spoiled the other's *Property*, Nature itſelf would have Inſtigated the Perſon Injured, not only to Defend his Property, by repelling the other's Force, with Force, but to Endeavour to Obtain a Reparation for the Damages, if he had Means to Compaſs or Effect the Vindication.

But then thoſe Contentions about Property, Introduced Battles, and Wars; and thoſe Introduced **Slavery**; becauſe the Conqueror might deal with his Captives as is before mentioned.

Britannus added, That this Reaſoning was a clear Confutation of the fabulous Dreams of ſuch, who Imagine there was once a *State of Nature* in which all Things were common, without any Diſtinction of *Property* in One more than Another: For if there never was ſuch a *Nature*, there could never be ſuch a *State* of it. But he owned, That there was a *State of Violence* and Inſecurity, in which every Man's Property, and his Natural Right in it, for want of human Power to Defend it, or Laws to puniſh Invaders and Offenders, lay at the Mercy of thoſe Idle and Vicious, but Strong, People, before Deſcribed; and this Inſecurity introduced another Inconvenience, that a Man might kill his Enemy, who would kill and deſtroy him; which made Men too much Judges in their own Caſe; and that therefore thoſe were the Diſorders which the *Aſſembly* was now Con-

Convened to *Reform*, by Inſtituting human Laws to Aſcertain and Support the *Laws of Nature*.

The Aſſembly heard *Britannus* with Pleaſure, and his Grand Motion being for the General Good, and being the *Salus Populi*, and the End of Government; the Propoſition, and the Reaſonings upon it, were Unanimouſly Applauded and Approved.

And thereupon it was Reſolved and Agreed, *Nemine Contradicente*, That this Propoſition ſo made by *Britannus*, and all the Parts of it ſhould *Be*, and be Ordained, Statuted and Inſtituted, and Be, and become the UNALTERABLE and INVIOLABLE BASIS, and Fundamental Principle and Subſtance of the whole Government; in which all the other Parts of it were (*as in the Axis*) to Centre; and that the ſame ſhould never be **Altered** or Impaired by any Perſons, or by any Power, or upon, or for any Reaſon or Pretence, True or Untrue, whatſoever.

Britannus further propounded, That it ſhould be added to this firſt Principle, That if any Man ſhould be Murdered or Robbed of his Goods, the Perſon Robbed, and the Son and Heir, or Brother and Heir, of the Perſon Murdered, being the Party Grieved, ſhould have a Suit or Action of Revenge, to be called an **Appeal** of Murder, and an **Appeal** of Robbery; in which the Offender ſhould be Puniſhed with Death, in Revenge for the Injury, without Power or Authority in any Perſon whatſoever to interrupt the Proſecution, or to pardon or remit the **Offence**, or to obſtruct the Execution, unleſs the Proſecutor himſelf ſhould pleaſe to *Forgive* the Wrong, and *Releaſe* the Condemned Malefactor; arguing, That this Privilege would be a Viſible and **Indelible Badge** of *Britiſh* Liberty and Property.

The Aſſembly Unanimouſly approved the Propoſition, and Reſolved and Agreed, That the ſame ſhould be an *Eſſential* and Inherent Part or Property of the **Firſt Principle** of the Conſtitution.

Britannus further propounded to the Aſſembly's Conſideration, That in Favour of Life, and as a Defence of all Mens Lives, no Man's Life ſhould be put in Danger or Jeopardy *Twice*, by Proſecutions or Accuſations *for the ſame Crime or Offence*;

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Offence; and therefore he Moved, that this Propoſition ſhould likewiſe be made an Eſſential Part of the Conſtitution.

The Aſſembly Unanimouſly Approved the Motion, and, without any Heſitation, Reſolved, and Ordained, That the Matter of this Propoſition ſhould Be, and be Ordained to be, a Fundamental and *Eſſential* Part of this Conſtitution.

SECT. VI.

BRITANNUS, before any further Proceedings, propoſed this Queſtion, That ſince Mens PROPERTIES in Lands were to be a material Part of this Conſtitution, whether the Proprietors ſhould have Power to make **Perpetuities** in the Deſcent and Inheritance of them; that is, Whether Men ſhould be Enabled to Settle their Lands, ſo as to Eſtabliſh in their Families, an *Indefeazible Hereditary Right*, without Power to *Alien*.

This Queſtion being Difficult, various Arguments aroſe thereupon.

The *Magnates*, or Great Men, who by their own or their Anceſtors Virtues or Good Fortune, had acquired Great Poſſeſſions, Argued for **Perpetuities**, and for a Power to Eſtabliſh an *Indefeazible Hereditary Right* in their Lands.

Agricola, an Eminent Commoner, Argued, on the other Side, That the Courſe of natural Proceedings ſhewed, That Great Eſtates in Lands were generally acquired by Men Learned, or Valiant in Wars, or Adventurous in Merchandize, and by the Induſtrious, and Frugal: That ſo long as theſe Families produced Men of like Virtues, their *Great Eſtates* would indeed Enable them to be Supports to the State, Ornaments to the Nation, and Benefactors to Mankind: but when thoſe *Cauſes* ceaſed, the Effect would likewiſe ceaſe.

Mercator, another Eminent Commoner, Seconded *Agricola*, and urged, That this Iſland is ſurrounded with Advantages for *Trade*, which is the *Source* of Riches, and that Riches were the *Baſis of Power*; That ſuch an *Indefeazible Hereditary Right* would Engroſs and Perpetuate in a few Hands, all the deſirable

Parts

Parts of the *Iſland*, by which the *Springs* of Induſtry and Arts, and the National Riches and Power, would be *Stagnated*.

Theſe Arguments of *Agricola* and *Mercator*, were approved by a Vaſt Majority of the Aſſembly.

Britannus Collected the Senſe of the People, and Expreſſed himſelf to this Effect, *viz.* That, in his Opinion, the Arguments for this *Indefeazible Hereditary Right* in Lands, tended to Invert the Order of Nature, and to fight againſt Omnipotent Power, by Endeavouring to make thoſe Things *perpetual* and Immutable, which God hath Decreed ſhall be *Changeable* : And therefore propoſed,

And accordingly it was Reſolved and Agreed by the Aſſembly, That an *Indefeazible Hereditary Right* in Lands commonly called *Perpetuities*, ſhould be Avoided and Diſcouraged, and that Lands ſhould be *Alienable* by one Man to another ; and that this RESOLUTION ſhould be, and become a Perpetual and Inherent Quality of all Mens Inheritances.

SECT. VII.

THE Foundation being thus laid, *Britannus*, in the next Place, propounded, That for the Preſervation and Maintenance of the firſt Poſition, or Fundamental Principle of Government, an ABSOLUTE, or ARBITRARY, or LEGISLATIVE POWER ſhould be Ordained, Inſtituted, and Erected, to which every one was to pay his Obedience, and Contribute his Aſſiſtance, and which ſhould be *Irreſiſtible*, *viz.* An **Abſolute Power** to Make and Alter, Change, or Suſpend, and Repeal Laws or Rules for the good Government, Guide, and Conduct of the whole People, according to the Exigence of the *State*, and as the Neceſſity of Affairs ſhould require ; with this *Reſtriction* only, That nothing ſhould be done by this Abſolute or Legiſlative *Power*, to Subvert or Confound the Firſt and *Fundamental Principle* or **Baſis** of this Government. This Propoſition being Deny'd by no Man, it was Reſolved, and Statuted, That it ſhould be, and become an Article of the *Original Conſtitution*.

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SECT. VIII.

THAT which Appeared to be the Grand *Difficulty* in the whole Contexture or **Formation** of this Government or *Original* Conſtitution, was how, and in what Perſons to Place or Depoſite and Intruſt this *Abſolute*, *Arbitrary* or *Legiſlative Power*, **In Truſt** for the whole Body of the People.

The Debates upon this Head were many and long; for Every one that could Speak and Argue, did Speak and Argue upon this Point.

And a Few of each Sort and Degree in the **Aſſembly**, Moved and Argued, That this Abſolute and ARBITRARY or Legiſlative Power might be Intruſted in the Hands of *One ſingle Perſon*, who ſhould be Declared a *King*, or *Monarch*, and that he ſhould have a Royal, or Imperial, or *Arbitrary* Authority, Supreme or Sovereign, over all Perſons, and over all their Eſtates, and that he being (as it is always to be preſumed) a Wiſe and Valiant Man, would take Effectual Care of the Welfare or Common Weal of the People, and would have it in his Power to make Timely, or Seaſonable Proviſion for the Protection of his People, and for the Preſervation and Maintenance of their Liberties and Properties.

The Spirit of this Party is Remarkable, becauſe though it was (as appears in the Sequel) at this Time, Over-ruled, and, in a Manner, Suppreſſed, yet it has been kept alive, and convey'd down to Poſterity; and for Diſtinction therefore, this Party may be called, **The Abſolute Monarchy-Men.**

The reſt of the **Aſſembly** oppoſed this Propoſition, with Great Warmth and Indignation, and, in particular, *Agricola* Inſiſted, That the **Truſting** any one Single Perſon or Monarch with the Abſolute, or **Arbitrary**, or Legiſlative Power, was utterly Inconſiſtent with, and Deſtructive to the Firſt Article and *Fundamental Principle* of the Conſtitution, before Agreed on, and Inſtituted, becauſe the Life, Liberty, Property and Eſtate of every Perſon, would be in the Power of this **Arbitrary Monarch**, to Diſpoſe of them at his Will and Pleaſure; That his Will therefore, which no Man could know, would be the

Meaſure

Meaſure of Right and Wrong, *Miſera eſt Servitudo ubi Jus vagum & incognitum*: It was alſo Inſiſted, That the Natural Fruit of **Arbitrary Power** was the Oppreſſion and Slavery of the People; That *Oppreſſion* was as inſeparable from **Arbitrary** Power, as the Shadow from the Body; That it may be ſaid of ſuch a Monarch; *Whom he will, he'll Kill*; *Whom he will, he'll keep Alive*; *Whom he will, he'll make Rich*; *and, Whom he will, he'll make Poor.*

It was, moreover Urged, That where **Arbitrary Will** and Pleaſure Guide and Conduct, or Reign without Controul, and Princes are at a full Looſe, to Execute whatſoever their Groundleſs Suſpicions, their Extravagant Humours, or their Wild Capricio's may prompt them to; no Man's Fidelity, Good Service or Merit can Secure him, either in his Perſon or in his Reputation, Liberty, Life or Fortunes; for, under ſuch a Government, a *Malicious Whiſper* of a Minion, or a Harlot, or an Arbitrary Miniſter of State, may cauſe the moſt Meritorious Man to be Deſtroyed, without knowing what he is Accuſed of, or being called to Anſwer, or admitted to Defend himſelf, or to have an Impartial Tryal or Judicature: The *Extravagancy* of the Propoſal was therefore Apparent.

Britannus, for this Reaſon, moved two Things;

Firſt, That the Abſolute, and **Arbitrary**, or Legiſlative Power ſhould never be given to, or *truſted* with, any ſingle Perſon or *Monarch*; upon which, many Debates did ariſe, *Pro & Contra*, and the Queſtion being put, it was Carried in the Negative, *viz.* That an Abſolute and **Arbitrary**, or Legiſlative Power ſhould never be given to, or truſted with, any ſingle Perſon; the Numbers were as 99 to 1.

SECT. IX.

SECONDLY, That it ſhould be an ESTABLISHED PRINCIPLE of this Conſtitution, as neceſſary to its own Self-Defence and Preſervation, That whenſoever an **Arbitrary** or Legiſlative Power ſhould be Aſſumed and Exerciſed over the Lives, Liberties, or Properties of the People of this Nation, that in that Caſe of *Neceſſity*, and when all other Means failed, *They*, and their Poſterity, ſhould *Diſturb*, and have a Right to Diſturb and Remove the Miniſters of ſuch **Arbitrary** Power,

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and to Purſue and Suppreſs them, as the moſt Dangerous Enemies to the Lives, Liberties, and Properties of the People of this Nation.

Here *Britannus* ſaid, That in order to Obviate Sophiſtical Cavils, it might be Convenient to Explain the true Meaning of the Words **Arbitrary Power**; which he ſaid meant, That whenſoever any ſingle Perſon or *Monarch* ſhall aſſume a Legiſlative Capacity, or an Authoritative Power to Make Laws, or, which is all one, to *Alter* the Laws in Being, or Diſpenſe with, or Diſannul them, or to Evade, or Suſpend the Execution of them; and ſhall iſſue out Commiſſions and *Commands* to execute his Orders, *as equal with Laws*; and if thoſe Orders be of a General Nature, affecting the People, in Caſes which are every Man's Caſe; Then it might be properly perceived, and known, and Reſolved, That ſuch a ſingle Perſon, or Monarch, does Aſſume and Exerciſe an **Arbitrary**, or **Legiſlative Power.**

Britannus added, That this Principle would be found, not only the moſt Innocent of all others, but the moſt Uſeful; becauſe in Times, when *Juſtice* and *Good Government*, according to this Conſtitution, ſhould be Adminiſtred, and no Man's Property, or Freehold, or Liberty Invaded, there would be no Occaſion to think of, or remember a *Right* of this Nature, which, if remembered, would be of no Uſe. But in Times when ſuch an **Arbitrary** or Legiſlative Power ſhould be Aſſerted and Exerciſed, and this *Conſtitution* Subverted, Then this *Latent Right* would appear to be the SOLE MEANS, by which this Conſtitution can be preſerved; for thoſe Inſtitutions muſt be altogether Vain and Uſeleſs, where *Power* and *Authority* are Wanting to Enforce the Performance and Obſervance of them.

This Propoſition ſo Explained, was Agreed to, and it was Reſolved by the **Aſſembly**, and Ordained, and Statuted, That in Caſes of *Neceſſity*, and when all other Means failed, the People ſhould have a *Right* and *Privilege*, in ſuch Manner as *Britannus* propoſed, to *Diſturb*, and Remove (or, in other Words, to Defend their Hereditary Rights, Privileges, and Properties, againſt) the Miniſters of ſuch **Arbitrary** Powers, as by this Conſtitution are Denied, if ſuch **Power** ſhould ever be Aſſumed, or the Miniſters Engaged in the Deſtruction

and

and *Subverſion* of this Conſtitution, or the *Form* of Government now Inſtituted; and that this *Reſolution* ſhould be, and become Part of the *Fundamental Form*, or Principle of this Conſtitution and Government.

Some others (more in Number) Moved, and Argued, That the Abſolute, and **Arbitrary Power** might be Lodged and Truſted in the Hands of the Nobles, or Great Men, in the Nature of an *Ariſtocracy*; Urging, That theſe Nobles, conſiſting of a good Number of Great, and Rich, and Wiſe Men, would perform the **Truſt**, for the Good of the People; and that no one Single Man amongſt them, ever could Dare, or Attempt, to aſſume the Abſolute and *Arbitrary Power*; becauſe all the reſt would oppoſe him; and that this Body of Nobles, would, for their own Sakes, take eſpecial Care of the Liberties and Properties of the **People** in General, becauſe they themſelves would have a very great Share in them.

But this Motion was Oppoſed and Rejected by the Majority, who Argued, That ſuch a Method, inſtead of making One **Arbitrary**, would make Many **Arbitrary Kings.**

Britannus therefore propoſed, That it might be Agreed and Reſolved, both Negatively and Affirmatively, in this Caſe, *Mutatis Mutandis*, as it was in the former Caſe of a ſingle Perſon or *Monarch*; which was Unanimouſly done accordingly; and this *Reſolution* became another Article of the *Original Conſtitution.*

Some others (ſtill greater in Number) Moved and Argued, That the Abſolute Power might be ſafely Lodged and *Truſted* in the Hands of the whole *Collective Body of the People*, Including the Nobles and the Commons, in the Nature of a **Democracy**; Urging, That the People, in general, ought never to be *Diſtruſted*, becauſe they themſelves were to be Prejudiced and Damnified by any evil Uſe or Miſmanagement of ſuch *Abſolute Power*; and that it was a Contradiction to ſuppoſe that they would act any Thing contrary to their own Intereſt, or tending to their own Deſtruction.

But this Motion was warmly Oppoſed by the Majority of the *Aſſembly*, who Argued, That tho' the Common People generally Apprehended right, yet they were uncapable of Judging or Diſtinguiſhing rightly; That they were generally led away by ſome

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Turbulent, Noiſy, Empty Men, and could take no regular *Reſolutions* for the National Advantage, and were, in their Freaks, Mercileſs and Cruel, often Murdering and Deſtroying Vertuous and Able Men, without hearing any Accuſation, or Anſwer, or Defence, or permitting any fair Tryal; and that therefore ſuch a Confus'd Multitude ought never to be *Truſted* with the Abſolute and **Arbitrary Power.**

Britannus Collected the Senſe of the **Aſſembly**, and propounded, That it might be Agreed and Reſolved, both Negatively and Affirmatively, in this Caſe, *Mutatis Mutandis*, as in the former Caſe, of a ſingle Perſon or Monarch: Which was Unanimouſly done accordingly; and This became another Article of the *Original Conſtitution*.

SECT. X.

ALL theſe Reſolutions Terminated only in *Excluſions* of Evils, or Oppoſitions to *Tyranny* and **Slavery**; and the Aſſembly continued in Great Uncertainty, and Irreſolution, not knowing where to fix or ſettle this **Arbitrary Power.**

Britannus, after a great Pauſe, and long Silence, and when no Man offered any Expedient, to attain the End propoſed, roſe up, and all Men fixed their Eyes upon him, Expecting ſomething uncommon, and beyond the Reach of other Men, and therefore called upon him to proceed.

Britannus therefore opened the preſent Difficultybriefly; How every Thing, that had been Offered, fell ſhort of the End Deſigned: He acquainted the **Aſſembly**, That he hoped, That what he had to propoſe for that End, would not be found Impertinent: He repreſented, That the **Form** of Government in every Nation, is of the *Eſſence* of that Government, and makes the Diſtinction between one Government and another: He reminded them, That the *Great Creator* had, out of the Duſt, *Formed* Man, and out of the Ground, had *Formed* every Beaſt, and that thoſe *Forms* were of the *Eſſence* of the Things formed, and made the Diſtinction between one Creature and another; and that, in his Mind, the Beſt, and Strongeſt, and moſt Equal Government, for the People of this Nation, might be *Formed*, partly out of the *Monarchy*, and partly out of the *Ariſtocracy*, and partly out of the *Democracy* before mentioned:

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He therefore proceeded to propoſe, That they ſhould *Form*, Ordain, Inſtitute and Erect THREE ESTATES, conſiſting of the beſt Parts of thoſe Three Sorts of Government, and that theſe *Three Eſtates* ſhould, in all Times coming, Repreſent this **General Aſſembly**, and the whole Body of the People of this Nation, and ſhould be Aſſembled together, upon all Occaſions, when the National Buſineſs ſhould be Extraordinary.

That the Firſt, and moſt EXCELLENT ESTATE, as the Head of the whole Political Body, ſhould be taken or *formed* out of the *Monarchy*; The Second, or next ESTATE, out of the *Ariſtocracy*; and the Third, or Inferior ESTATE, out of the *Democracy*; and that in theſe Three Eſtates *Jointly*, and in none other, they ſhould Place, or Lodge, and Intruſt the whole Abſolute and **Arbitrary**, or Legiſlative, Power; and for this End, he Deſcribed the Three Eſtates.

I. That the Firſt, and moſt *Excellent Eſtate*, or Supreme Head of this Great Body, ſhould be a Political Supreme Office, to Guide and Conduct the Reſt; and, for that Reaſon, ſhould be raiſed above the Reſt, which ſhould be the *Glory of the Nation*; and that, to add MAJESTY, it ſhould be Crowned with a CROWN of Pure Gold, Adorned with the Richeſt Gems, as *Caput Regni*; That to this Crown there ſhould be Annexed Royal and *Sovereign Rights* and *Prerogatives*, which ſhould give it a Luſtre and a Veneration ſuitable to the moſt *Excellent Dignity*; That the ſingle PERSON, who ſhould be Declared Supreme Governor, or Head, to Execute and Adminiſter this *Higheſt Office*, and to Wear this *Crown*, ſhould be ſtiled KING, and ſhould have ſuch Honours paid him, as are due to Royal and *Imperial Majeſty*; and that a THRONE ſhould be raiſed for him, on which he ſhould ſit, when he Performs the Higheſt Acts of Government; and that his PERSON ſhould be Exempted from all Coercive and Offenſive Acts of Violence whatſoever, upon, or for any Reaſon, or Pretence of any Reaſon, whatſoever; and that the FIRST PERSON who ſhould be Declared *King*, and all ſucceeding *Kings*, ſhould, at, or ſoon after, his Aſſuming to Exerciſe the Regal Power, be *Crowned* with the greateſt Solemnity.

II. That the Second ESTATE ſhould conſiſt of ſuch a Competent Number of Great Men, as the King, who was to be the *Fountain* of Honour, ſhould chuſe, and call from amongſt the People,

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ple, to the Dignity of Nobles, or Lords, who, when Assembled together, should be called and stiled, *The House of* **Lords**, and who should have an **Hereditary** Privilege and Right to be of the Great Council of the King and Nation.

III. That the Third ESTATE should Consist and be *Formed* of a Competent Number of Commoners, to be from Time to Time Elected and Chosen by the Common People of the several Parts of the Nation, to be their *Temporary Representatives* and *Trustees*, to Act for, and on their Behalf, and for their Benefit, Advantage, and Vindication in all Things; and that such Commoners, so Elected and Chosen, and being *Assembled* together, should be called and stiled, *The House of* **Commons**, and that these Elections should be Free and Spontaneous, without Menace or Fear, Force or Corruption; and should be, and be Accounted, the *Hereditary Privileges* of the People.

Britannus, having thus Described the THREE ESTATES; proceeded to propose, That when the King, or Supreme Head and Governor, should think fit to Summon, or Call the other *Two Estates* together, to Assemble and Meet, and Advise, and Assist him in the Arduous and Difficult Affairs, Touching his Royal State, or the State or Defence of the Nation; these *Three Estates*, to wit, the *King*, the *Lords*, and the *Commons*, being so Assembled, should be the *Great Representative* of all the People, as if they were all Conven'd into one intire Body and *General Assembly*, and should be called, *The Parliament*, and the Grand Inquisitors and Council of the Nation; and that the Absolute, and Unlimited **power** of Making and Altering, or Changing Laws for the Good of the whole Collective Body of the People and Nation, should be **jointly** Vested in such Parliament, so Composed of such THREE ESTATES of King, Lords, and Commons, in Parliament Assembled; and that no Law should be made, or be Obligatory, or have the Force of a Law, nor any Law, nor any Part of a Law, should be Altered, Changed, Repealed, Suspended, or Declared Void, or Rejected as Useless, unless the same should be so made, and done, and consented to, **jointly**, by, and with the Concurrence and Authority of all such **Three Estates** in Parliament Assembled; Urging, That the *Form* of Making and Enacting Laws, is the very **Essence** and Foundation of Government.

SECT.

SECT. XI.

BUT then *Britannus* propounded, That this Abſolute Power ſo to be Given to and Veſted in them, ſhould be Qualified with ſome **Memento's**, in the Nature of Reſtrictions; And here he Deſired Leave to Clear himſelf from Miſtakes; as if he Meant Contradictions, when he mentioned a Power to be Abſolute, and yet Reſtrained; for that would be *oppoſitum in objecto*; but he would be Underſtood to Exclude *Inconſiſtencies*, and to mean a Difference between the *Power* and the Act, or between an Abſolute *Power* and the *Exerciſe* of that Power: He Argued, That (with Reverence) it might be ſaid, There were ſome Things which the Omnipotent Power could not do, *viz.* That when He made a Law for Mankind, Directing, That the Obedient ſhould be Rewarded, and the Diſobedient Puniſhed; he could not Give Rewards to the Diſobedient, merely for their Diſobedience, or Puniſh the Obedient, merely for their Obedience to that Law; becauſe ſuch a Proceeding, would be Inconſiſtent with the Divine Truth, Purity and Juſtice. *Britannus* Added, That the Firſt Article of this Conſtitution, was already made the Unalterable Baſis of this Government; and by that Article it is Inſtituted, That every Man ſhould have the Liberty of his Perſon, a Property in his Lands and Goods, and a Freedom of Trade, *&c.* and therefore, ſince the Abſolute Power was Veſted in the Three Eſtates, ſome *Memento's* ought to be Added, not Directly to Reſtrain, but to *Guide* the Exerciſe of that Abſolute Power.

He Argued, That the *Reſemblance* between the Natural Body, and the Political, might be Alluded to, in the Caſe in Hand; For when God Created Man, he Made him a free Agent, to Chuſe or Refuſe what he pleaſed; but, at the ſame Time, he Implanted in Man, as Part of the Eſſence of his Nature, the Law of Self-Preſervation, including therein the Paſſions of Hopes and Fears, Love and Hatred, whereby Man was *Truſted*, with a Care and Faculties, to preſerve himſelf; but Man, according to his Unlimited Freedom, might, if he would, Deſtroy his own Life; and if he did ſo, he was an Offender, and a Breaker of the Law of Nature.

He Argued, That when the *Abſolute Power* ſhould be Veſted in the Three Eſtates, a **Truſt** ſhould be Tacitly Conveyed,

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veyed, in Company with it : That it ſhould be Exerciſed and Uſed, to Promote and Advance the Ends of the Firſt Article, which was the *Salus Populi*, and *the End of Government* ; and that therefore the *Reſtrictions* he meant, were not properly *Reſtrictions*, but *Memento's* : That to Unmake or Impair the Firſt and Original Principle of this Conſtitution, in Relation to Mens Lives, Liberties, Properties, and Trade, before Statuted, or to Unmake, or Extinguiſh the Inſtitution of Parliaments, or to Break their Power, or to Part with, or Delegate away their Power or Being, or to do any Act or Thing, from whence it may be Inferr'd, they ſhould never meet again, as a Parliament ; or to take from any Innocent Man the Liberty of his Perſon, or his Freehold, Inheritance or Property in Lands, Revenues or Goods, without his Actual and Expreſs Conſent (and not by any Implied Conſent) unleſs it were to Build Forts, make Rivers Navigable, or to Enlarge Highways, *&c.* for the Publick Uſe, Safety, or Utility ; and not in that Caſe neither, without Giving, in Exchange, an Ample Compenſation ; **Would** (as he Argued) be Acts Inconſiſtent with the very End of the *Grand Truſt* Repoſed in the Three Eſtates, and would Contradict and Oppugn the very Deſign of their Ordination, and Turn that Power to Deſtroy that very Thing, it was given to Preſerve ; and therefore he propounded theſe Conſiderations, not as Direct Reſtrictions, but as *Memento's* ; to Direct and Guide the Exerciſe of the Abſolute Power, in Making and Altering Laws.

Britannus Argued, That Elections of the Commons, would bring them into a large Share of the Abſolute Power ; But then he Propounded this *Explanation*, That thoſe Elections ſhould Include this Reſtriction ; That the Repreſentatives ſhould not have Power to Extinguiſh, or Part with, or Give, or Delegate away in Part, or in the Whole, the Peoples Share, in the Legiſlative Power, or any of their Hereditary Powers or Privileges, into the Hands of any Perſon or Perſons whomſoever, either in Parliament, or out of Parliament ; for thoſe were to be Inſeparable and Unextinguiſhable : But, above all, that They, as Repreſentatives of the People, ſhould not have Power to Give away, or Extinguiſh, or Unmake, the Power or Right of the People themſelves, of Electing New Repreſentatives, or to Vote or Agree, That the People ſhould have no New Elections, or ſhould never Elect again.

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He Argued, That it would be Abſurd, and Unnatural, to Imagine, That theſe Truſtees or Repreſentatives, *Intruſted* with a Secondary Power, to Act for the Good of the *People*, ſhould have an Authority to Give away, or Extinguiſh that *Primary Power*; which Gave the *Secondary*; Foraſmuch as ſuch a Notion would infer, as if the People ſhould Chuſe Repreſentatives, to Act againſt their Intereſt, or to ſuppoſe, That Plenipotentiaries might Abrogate and Aboliſh, the Power of their Conſtituents or Principals.

Britannus Argued, That in Regard the Dernier Reſort, in Matters of Juſtice, and the Power of Making Inquiſition for Publick Offences and Offenders, and Redreſſing Grievances, and the Power of Amending Old Laws, and Making New Ones; and, conſequently, the Power of Offending and Defending, in Dealings with Enemies, were to be Veſted, and Intruſted in the Parliament: And in Regard Juſtice, in thoſe Matters, could not be done, if Parliaments were not Aſſembled, he therefore Propounded to the Aſſembly, That it ſhould be Ordained and Statuted, That the **Aſſembling** and Holding of Parliaments, ſhould be Deemed the Baſis of the Acting Part of this Conſtitution, and the *Pabulum*, or *Materia Prima*, to Feed and Give Strength and Force to all the Motions of this Government, and to the Powers of this Nation; and that it ſhould be underſtood, That the Mind and Intent of the Nation, or People, will firſt Move and Appear in Parliament, and will (as the Heart tranſmits Blood) Impart Spirit and Vigour, as well to the Head, as to all the other Parts of the Body Politick, whereby the whole Structure of the Government is to be Nouriſhed and Maintained; and that therefore the Aſſembling of the Parliament ſhould be Accounted a Debt due, in Juſtice, to the Nation.

All which Motions and Propoſitions, being Approved, the Aſſembly Reſolved, Agreed, Ordained and Statuted;

I. That there ſhould be Inſtituted and Ordained, ſuch THREE ESTATES of King, Lords and Commons, to Repreſent, in all Things, this General **Aſſembly**, Accounting the Intended King to be the Sovereign and Supreme Head of the whole Congregated Body.

II. That

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II. That the Absolute, and Arbitrary, or Legislative Power of Making and Altering Laws, for Good Government, otherwise Called the Legislature, should be Vested **Jointly** in these *Three Estates* Assembled in Parliament, and in **None Other**, as Trustees for the Whole Body of the People; *Qualified*, nevertheless, with the *Memento's* or Restrictions Propounded by *Britannus*; and Especially with that Restriction, whereby they are Disabled to Give **Power** to any other Person or Persons, to Impose Taxes, or Levy Money, either in or out of Parliament: And,

III. That in Regard the **Assembling** and Holding Parliaments for the Ends aforesaid, was to be not only the Basis, but the *Pabulum*, or *Materia Prima*, to Feed, and Give Strength and Vigour to all the Motions of Government, and to the Powers of the Nation, and particularly in Cases of Offensive or Defensive Wars; that therefore such *Assembling* and Holding Parliaments, should be Deemed a *Matter of Justice* due to the Nation; And that a Failure therein, should be a Failure of Justice, or a Denial of the proper Food or Aliment to the Nation.

And that these Three Resolutions and Ordinations, with those Qualifications, should be, and become the Fundamental and Essential **Form** of this Government, and the Hereditary Powers, Rights and Privileges of this People, and should be, and become Unalterable Parts of the Original Constitution, for the Conduct and Governance of this Nation, never to be Impaired, Abolished, Abrogated, or Altered.

SECT. XII.

BRITANNUS having thus Overcome the Grand Difficulty, touching the Disposal, and Settlement, and Qualifications of the **Arbitrary** and Absolute, or Legislative POWER, he proceeded to propound several Powers and *Privileges*, which as Incidents ought to be Provided and Assigned to Each of these *Three Estates*, in Order to render the Frame of the Government Uniform, Strong, and Honourable.

And because those Powers and *Privileges*, relating to the Glory and Grandeur of the *Crown*, and the *Majesty of the Intended King*, that was to wear it, were most Numerous and of

of the niceſt Nature, he deſired Leave to poſtpone them, and proceed firſt to thoſe Powers and **Privileges** which were proper for the other *Two Eſtates*, and Diſpatch them, as being few and ſhort, and of a plainer Nature; and accordingly propounded,

I. That the Houſe of Lords, beſides their Part in the Legiſlature, ſhould be Inveſted with, and ſhould have, as *Interwoven in their Conſtitution*, theſe Special Powers and **Privileges**, *viz.* That their Right of Peerage ſhould be deemed a Special Truſt for the Whole Government; That they ſhould have the *Dernier* Reſort only in all Matters of *Judicature*, and the ſole Judicature of *Impeachments* Commenced and Proſecuted by the Commons; and that it ſhould be deemed an Eſſential Part of that Judicature, to take Cognizances of thoſe Impeachments, and to Hear, and Deter-termine the Matters therein Charged; and the Reaſon he gave, for Inveſting them with the *Dernier Reſort*, was, Leſt **Illegal** Judgments in Inferior Judicatures, ſhould Creep in, and Enervate, and, by little and little, Undermine and Change the Fundamental *Form* and Principles of this Conſtitution; of which there might be ſome Danger, in Regard the *Judges* would neceſſarily be of the King's **ſole** Nomination and Appointment.

But in Queſtions of **Property**, where the Claims on either Side, ſhall not be mixed with Equity; This Ultimate Judicature ſhould (without Additions to ſupply Defects) give the ſame Judgments, as are preſcribed by the ſtrict and poſitive Laws in Being; Becauſe thoſe Laws ſhould be every Man's *Birthright*, and ſhould have no *Controuler*, nor be *Controuled* by any Judicature (Except only by that **Power** which is to be Legiſlative, in which every Man's Conſent is to be Involved); For if a Law and Rule of Property be made, and a Man's Caſe ſhall not be Determined by it; the Law, and the Authority of the Makers, would be Vain and Nugatory.

II. That the **Houſe of Commons**, beſides their Part in the Legiſlature, ſhould be Inveſted with, and ſhould have, as *Interwoven in their Conſtitution*, theſe Special Powers, Rights and **Privileges**, (*viz.*) the ſole Right and **Power** over the Monies and Treaſures of the People, and of Giving and Granting, or Denying Aids or Monies for the Publick Service, and ſhould have the *Firſt* Commencement and Conſideration, and the ſole Modelling in their Houſe, *not only* of all Laws for *Impoſing Taxes*, and Levying and Raiſing Aids or Money

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upon the *People*, for the Defence and Support of the *State* and *Government*; **But** alſo of all Laws, touching the Taking from any Man his Property; and ſhould have **power** to Inquire into, and **Judge** of the Uſes and Occaſions for which Monies are to be Demanded and Given; and to **Appropriate** the ſame to thoſe Uſes, and to *Inquire* into the Applications, and to Cenſure the Miſapplications thereof; and that this **Right** ſhould be ſo Inviolable, That *Neither of the other Two Eſtates* ſhould *propound* any thing, nor *Interpoſe* nor Meddle in any of their Debates or Proceedings, touching thoſe Matters; and that theſe Powers and *Privileges* ſhould be, and be Accounted *Hereditary*, and as the moſt Eminent **Pillars** of this Conſtitution; **And** that the Commons in Parliament Aſſembled, ſhould alſo have the **Terrible Power** of Inquiring into Grievances, and Queſtioning and Impeaching ſuch *Malefactors*, as ſhould be found *Subverting*, or *Endeavouring* to Subvert, or Adviſing the Subverſion, or Alteration of the *Fundamental Form* of this Government.

But then *Britannus* Repreſented to the Aſſembly, ſome **General Privileges**, that would be Incident and Common to *Both the Two Eſtates*, or Houſes of Lords and Commons, in their Legiſlative, as well as their Inquiſitive Capacities, and as being the Grand Council of the Nation; as,

I. That **all New Laws**, and **all Laws** for the Repealing or Altering Old ones, ſhould be **Firſt**, and Originally Choſen, Moved, Propounded and Introduced, **Either** in the Houſe of Lords, or in the Houſe of Commons, by the Members thereof, and by no other Perſons, nor in any other Place (Except *General Pardons*, which were moſt proper to move from, and be Conceived and Framed by the Crown, becauſe Pardons are not properly New Laws, but a Relaxation of the Old ones); and that this **Privilege** of the Two Houſes, ſhould be ſo Ample, Separate, and Intire, That the Intended King, who is at laſt to Give or Refuſe the Royal Aſſent, ſhould *not take Notice* of any Thing, ſaid or done, or of any Matter Depending in Agitation or Debate, in either Houſe of Lords or Commons, without their Information or Agreement; nor Propound any Condition, Proviſion or Limitation to any Act or Statute in Debate or Preparation; nor Declare his Aſſent or Diſſent, or his Approbation or Diſlike thereof, until it hath paſſed the Two Houſes, and be preſented to him in a Parliamentary

mentary Courſe ; firſt for his private Conſideration, and afterwards for his publick Giving, or Denying the Royal Aſſent.

II. The **Freedom** and Exemption of their Perſons, from all Manner of Reſtraints, Force, Menaces, Arreſts and Impriſonments, and even from the Fear of them ; and that no Perſon, or Member of either Houſe of Parliament, or having a Right to Sit and Vote in Parliament, ſhould ever be Prohibited or Reſtrained, either by Force, or by Menaces ; from his *Freedom* or Acceſs to, or from, or in the Parliament (Except always Commitments by their own Houſes, or with their Leave).

III. **Liberty** of Speech in their Debates, and Liberty, as well to Propound and Adviſe the Making New Laws, or Altering Old ones, as to Repreſent, Arraign, and Aggravate Grievances ; and that no Member, of either Houſe, ſhould Suffer, or be Queſtioned, Charged or Compelled to Anſwer, in any other Court or Place whatſoever, for any Thing by him Said or Spoken, or Propounded or Argued, or Adviſed, or Voted in Parliament.

IV. **Free Acceſs** to the King's Perſon, with Addreſſes, Repreſenting Male-Adminiſtrations, or Grievances, or Making any Requeſts for the Publick Uſe or Utility.

V. **And the Power** to Puniſh ſuch Malefactors, by whom the Rights, or Privileges, or Dignity, or Proceedings of either Houſe of Parliament, ſhould be Traduced, Detracted from, or Defamed, or otherwiſe Contemned, Affronted, or Abuſed.

VI. And that no Member, of either Houſe of Parliament, ſhall be Obliged to be a Witneſs, in any Court or Place whatſoever, to Anſwer or Prove any Thing that was Said or Done in Parliament ; becauſe every Member of each Houſe Acts in a Judicial Capacity.

Britannus Argued, That theſe General Privileges were ſo Eſſential to the **Powers** Aſſigned to the Two Eſtates of Lords and Commons, and ſo Indiſpenſibly neceſſary, that without them, they Could never *Exerciſe* their Parts of the Legiſlature, or *Act as Free Agents.*

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That the Violation of these Privileges, would be no other than an Abolition and Subversion, of the whole Constitution and Form of Government; He Argued, That whatsoever is once Enacted and Passed into a Law, by the whole Legislature, must, and will be Lawful; but that nothing could come into such a Law, but it must be first Offered and Propounded, and Reasoned upon, by some Body, so that if the Act or Law, when it is made, can wrong no Body, no more can the *First Propounding* and Reasoning the Subject Matter of it. He Repeated his Argument, That an Act or Statute of such Parliament, as is here Instituted, can never Disturb the State, therefore the Debates that tend to it, cannot; for it must be Propounded and Debated before it can be *Enacted* or *Statuted*.

He Argued, That the like might be said of their Complaints of Grievances, and of their Inquisitions for **Offences**, by which this Fundamental Form of Government, or Constitution, may be over-turned, or in Danger of being over-turned.

All these **Privileges** of Parliament, as well the **Special** as the **General**; being Universally Approved, the same were Agreed, Resolved and Ordained to be, and become *Essential*, and Fundamental, Inseparable and Incommunicable Parts of the Constitution, and to be *Hereditary* Privileges and Powers, Descendible to the People of this Nation, as their *Birthright*: and Inheritance, in which every Individual Person should be Interested; And moreover, That this Quality or Explanation should be Incorporated therewith (to wit) That all the *Powers* and Privileges before specified, should be Deposited in the Hands of the *Two Estates of Lords and Commons*, as Trustees for the whole **Body** of the People in General, and that such **Trusts**, Powers, and Privileges, or any of them, should *never be parted with*, or Given, or *Delegated* away; and that all Attempts and Endeavours *to Subvert or Destroy* these Parliamentary *Powers* or *Privileges*, or any of them, should be Deemed **Overt Acts**, of Subverting this Fundamental Form of Government.

SECT. XIII.

BRITANNUS, at this Period, took an Occasion to Represent to the **Assembly**, That although they had providently Instituted the First Article of this Constitution, touching *Liberty*

Liberty and *Property*, in General and Strong Terms, as the Unalterable **Basis** of this Government; and that although they had also Established a Grand and Fundamental **Privilege** in the House of Commons, *viz.* That the sole Right and Power over the Peoples Monies and Treasures, and of *Giving*, and *Granting*, or *Denying* Monies, and *Imposing Taxes* for the Publick Service, should be Vested in them; and that all Motions and Laws Relating thereto, should be *First Propounded*, and have their **Rise**, Commencement and Progress in their House; **Yet** he Informed them, That if something more were not done, for the Better Ascertaining, and Settling, and Limiting the Right and Power of **Imposing Tares**, and Levying Monies upon the People; all they had Done, or should Do, would Signify Little towards an *Establishment* of the True Intent and Meaning of the First Article of this Constitution.

To Explain which therefore, he Proceeded, and told them, That the Powers, Privileges and **Prerogatives**, which must necessarily be Annexed to the Crown, as he should shew, when he came to Speak of that Matter, would appear so Transcendent and Glorious, that Succeeding Kings might, in After-times, arise, who, together with their Flatterers, would possibly Apprehend and Contend, That the whole Absolute and **Arbitrary** Power is vested in them; and that the other Two Estates are but *Unnecessary Clogs and Incumbrances*, to the Monarchical Government: They will Argue, That in Regard the *General Care of the Nation* and People, and the whole *Executive Power* of the Government, is to be Committed to, and **Trusted** in the Intended King, which Infers an Incumbency on him, to Protect and Defend his Subjects, and to see that the STATE and Weal Publick receive no Damage; which being a Thing Impossible to be done, without *Competent Treasures*, the Ministers will therefore Conclude and Advise, That the Intended King ought to be *Judge of the Danger and Necessity*, and of the Means when, and how to Remove or Prevent that Danger, and of the Quantity of Monies Wanting, to Enable him to Administer, according to their fancied Scheme of Government; and, therefore, upon these Foundations, the Intended King, by the Advice of Evil Ministers, would probably Assume an **Arbitrary** and Legislative Power, to *Impose Taxes* upon the People, and Compel the Payment of them, for the Support of the *State and Government*, in such Cases, as he should please to say, The Kingdom, or the Trade thereof,

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or the Sovereignty or Dominion of the Seas, Bordering this Nation, *were in Danger*, and would Contend and Insist, That such a **Levying** of Money, in Cases of *Danger* and *Necessity*, would, in no Sort, be a **Breach** of the First Article of the Constitution, but a National Business; in the Event whereof, every one would be Concerned; Forasmuch as the Taking from the People a Little of their Money, or a small **Part** of their Property, would be done only to preserve the Rest, and that such a Proceeding would be Consistent with that First Article, so much Contended for.

Britannus, having fairly Stated the Grievance or Objection in strong Terms, he Exerted himself in the Answer to it: He Admitted, that a Real Necessity, which will Admit of no Delay. (as when a Man's House is on Fire) and Cannot be otherwise Avoided, than by Doing some Extraordinary Acts of Power, is Superior to all Laws; but then that **Necessity** must be Plain to every Man's Common Sense; whereas to make any Man **Sole Judge** of the Necessity without Contradiction, is to make him at the same Time **Arbitrary.**

Britannus Represented, That Money was the **Sinews** of Power, and the **Spring** of Violence; That it was the Means by which *Standing Forces* were Maintained; That where an Armed Force Reigned, Naked *Laws*, or *Contracts*, or Constitutions, or Hereditary Privileges, were mere *dead Letters*; That by the same Reason, That the Intended King might take a Small **Part**, he might take the Greater **Part** of any Man's Property, at least he might be *Partial*, and take the Whole of such a Man's Property as he Disliked, and a Moderate *Part* only, of such a Man's Property as he favoured; That if the **Exception** of Danger, or **Necessity**, and the sole Diction or Judgment of it, were once admitted to be Inherent, and to Reside in the Crown, That Single *Exception* would Eat up, and Devour all the other **Parts** of the Original Constitution, and would *Attract* the Whole of that Absolute, or **Arbitrary** Power, which the *Assembly* had, with so much Sagacity, taken Care to Divide and Distribute amongst the *Three Estates*; For who could be able to Controvert with the Crown, the **Breach** or Grievance, if the Intended King could feed his Power with Money raised, without the Concurrence of the other *Two Estates*? And moreover, he Alledged, that this Single *Branch* of the Absolute and **Arbitrary** Power, would make the other

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Two Eſtates, not only Uſeleſs, but Hateful to Evil Miniſters, as being dangerous to be called together, and by a Sort of *Logick*, they would leave no Man any thing, which he could call his Own, and conſequently, would *Subvert* and Overturn the whole Frame or Form of this Government, which they were now about to Inſtitute; and that for theſe Reaſons, an **Explanation** of this Matter would be the *Grand Pillar*, upon which all the other Parts of this Conſtitution muſt neceſſarily Depend, and be Supported; and that the **ſame** ought to be in the Cleareſt and Strongeſt Terms, Cleared, Aſcertained, and Eſtabliſhed; For he would adventure to Preſage, That this Power of *Impoſing Taxes*, and Levying Money, would prove the principal Part or *Pillar* of Government; which, in all ſucceeding Times, would be Queſtioned, Controverted, and Struggled for, between the Intended King and this People, or their Repreſentatives in Parliament.

Britannus therefore propounded, that it might be Inſtituted and Provided, That no Man ſhould be Charged or *Compelled* to Arm himſelf, to Attend the Intended King, or to find Armed Men to Attend him, in any Wars, unleſs a ſudden, and actual Invaſion of Foreign Enemies ſhould make it Abſolutely neceſſary; and **That no Part** of any Perſon's Freehold or Property in Lands, Goods, or Money; or, which is the ſame Thing, *no Part* of the Revenues or Profits thereof; nor any other Charge, ſhould, in Times coming, be laid, or *Impoſed* on, or taken from, or Levied upon him by any Power or Authority, or by or under the Pretence of any Power or Authority, whatſoever, or upon, or for, or on Account of any Danger, or Neceſſity, or Pretence of any Danger or Neceſſity, whether True or Untrue, whatſoever, or for the Publick Service, or for the Support of the State or Government, or for any other Purpoſe whatſoever; *But ſuch Part only* as ſhould be Given and Granted by the Commons, and Aſſented to by the Lords in Parliament Aſſembled.

Britannus further propounded, That there ſhould be Inſtituted this Difference in the Form of Paſſing and Giving the *Royal Aſſent* to Acts of Parliament; That ſuch General Acts, as concern Good Government, ſhould, after they have paſſed the Two Houſes, be preſented to the Intended King to Adviſe thereon, with his Privy Council; and that the Royal Aſſent ſhould be Pronounced in Words to this Effect, *Le Roy le Veut*, i. e. The King Wills the ſame Thing, as the Lords and Commons

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Commons do Will. But Bills *Giving* and Granting to the Intended King **Money** or **Aids**, ſhould not, after the Lords have Conſented, be preſented to the Intended King, but ſhould be *Delivered back* by the Lords to the Commons; and that when the Intended King comes into Parliament, to paſs ſuch Money Bills, the Commons ſhall Deliver the Bill to ſuch King, Declaring **What** they do *Give* him; to which the Royal Aſſent ſhall be Pronounced in Words to this Effect; *Le Roy Remercier ſes Loyal Sujets*, i. e. The King Thanks his Faithful Commons; Which Difference will, in all Times coming, Illuſtrate, and Prove the Original Form of this Conſtitution.

All theſe Propoſitions were Unanimouſly Agreed to; and thereupon it was Reſolved and Ordained, That the ſame, and the Matter of them, and of every of them, ſhould be, and become, and ſhould, in all Times coming, be Taken to be, the Hereditary Rights and Privileges of every Subject of this Nation; and that the ſame ſhould for ever be Fundamental, Eſſential, Perpetual, and Unalterable Articles or Parts of the Fundamental **Form** of this Government and Conſtitution, never to be Abrogated, Impaired, Aboliſhed, or Altered.

SECT. XIV.

BRITANNUS put the Aſſembly in Mind of **Trade**, as an Affair of Great Importance, touching which, there could not (as he Apprehended) be, at the Time of Forming the Government, any Certain Rules Inſtituted, either for the Promoting or Preſerving it. However, he Repreſented, That the *Exportation* and Sale of the Native Product of this Land, and the *Importation* of Foreign Commodities, in Exchange for them, would Create a General Employment and Induſtry; and be the Spring of *Riches*.

He likewiſe ſhewed, That the *Situation* of this Iſland, was, in reſpect of **Trade**, the moſt Commodious, in Regard every Wind that Blows from any Quarter of Heaven, would either Bring, or Carry Ships, into, or out of ſome Port or other of this Nation.

But *Britannus* Added, That ſince **Trade** was in its Infancy, and the Nature of it not at preſent fully Known or Underſtood, he therefore Propoſed, That, for an Encouragement, it ſhould be Inſtituted

Inſtituted and Ordained, That every Native of this Iſland ſhould have a Freedom of Trade; Exempt from any Reſtraint, or any Impoſition of Taxes or Tallages to be Impoſed, either on his Ships, or on his Merchandizes, or on his Perſon, in Reſpect of them, by any Perſon, or *Power*, or Authority whatſoever, out of Parliament; and that the Inventing, Protecting, and Encouragement of *Trade* and *Traders*, ſhould, in all Times, be one of the Primary Cares and Buſineſſes of the Three Eſtates in Parliament Aſſembled: To which all the Aſſembly, *Nemine Contradicente*, Aſſented and Agreed; and thereupon this Propoſition was Unanimouſly Reſolved and Directed to be, as an Hereditary Privilege, Ingrafted into, and to be, and become Part of the Laſt Article of Government, next before mentioned.

SECT. XV.

At this Period, *Britannus* Moved and Opened to the Aſſembly, for their Conſideration, a Matter of the Greateſt Weight and Moment, in which all the *Three Eſtates* would be equally Concerned and Affected; and unleſs Care were taken, and Cautious Proviſions in that Behalf made, all they had been doing, or ſhould do, towards the Framing a Good and Happy Form of Government, would prove a mere Rope of Sand; this Matter, he told them, was to State and Aſcertain the *National Power*, in, over, and by their **Military Forces**, which ſhould be found Neceſſary to Protect the Land, and to Defend, and Repel Foreign Injuries and Invaſions, and to Suppreſs Domeſtick Rebellions, and Inſurrections; all which would Centre rather in Defenſive than in Offenſive Wars; For as to *Conqueſts* over Neighbouring Countries, he Apprehended that to be a Matter to this Nation wholly unneceſſary; it being an *Iſland* happily Situated, and with the Sea Environ'd, and wanted no Larger Territories to make it an happy Region; the quiet Enjoyment of it therefore was only to be Wiſhed and Secured.

But then *Britannus* Added, That the Defence of the Nation would, in many Caſes, Iſſue into Offenſive Wars; becauſe Natural Reaſon Teacheth, That it is more Advantageous to Invade, and Seek, and Aſſault Enemies at their Home, than to ſtay and ſuffer them to Invade and Strike us at our Home.

Britannus Diſtinguiſhed and Placed the *Military Powers*, under theſe two Denominations;

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I. **Naval Forces**; To Raiſe a Maritime Power, not only to Vindicate and Aſſert the National *Sovereignty and Dominion over the Seas*, by which the Borders of the Iſland are Surrounded; but alſo to protect and promote the Freedom and Privilege of **Trade** in all Parts of the World: But as to the Preparations of theſe *Naval Forces*, and how they were to be Commanded, and how Employed, and *how long Continued*; he left thoſe Matters to the Debate and Conſideration of the *Aſſembly*.

II. **Land Forces**, To Obviate and Beat off Invaſions from Abroad, and to ſuppreſs Rebellions and Inſurrections at Home, and to be Raiſed at ſuch Times only, as the Danger ſhould Call for or Require them; but as to the People, of whom ſuch *National Armies* were to be Compoſed, and upon what Occaſions, and for what Purpoſes Raiſed and Employed, and how to be Commanded, *and how long Continued*, and when to be Diſmiſſed and *Disbanded*, he Referred thoſe Regulations to others Sentiments and Conſiderations, with this Intimation of his Thoughts, That the **Command** of ſuch National Forces, and alſo the Appointment of all Admirals, Generals, and Officers, would neceſſarily Appertain to the SUPREME MAGISTRATE, or Perſon whom they were about to Declare to be their King.

MERCATOR, upon the Opening of this Large Field for Debate, Roſe up, and Addreſſed himſelf to the Aſſembly, and told them, That **Traders by Sea** participated partly of the Adventuring Merchant, and partly of the Soldier; for when they *Exported* in Ships the Product and Growth of this Iſland, and *Imported* Foreign Merchandize, they *Riſqued* the ſame upon the Ocean, not only to the natural Perils of the Sea, but to the Aſſaults of Robbers and Rovers; and did therefore Furniſh themſelves with Arms, not only *Defenſive* but *Offenſive*; and many Times, in their Defences of their Ships and Goods, did Act and Imitate, and ſometimes Parallel the *Greateſt Heroes*; he therefore thought it was a Thing moſt Neceſſary, That there ſhould be made to the Aſſembly, a Repreſentation of their *Maritime Affairs*, and therefore proceeded:

He told them, That the Sea Coaſts of this Iſland could never be Fortified, becauſe the ſame lying round the Nation, were

too

too far Extended, to make Acceſs Difficult; and that therefore, whenever the *Neighbouring Potentates* ſhould furniſh themſelves with Ships, the Coaſts would, in too many Places, lie open, and eaſy to their Entries and Invaſions.

That there were no other Avenues, by which Ingreſs or Egreſs could be made into or out of this Iſland, but by and through the *Neighbouring Seas*, and that therefore **Neceſſity** Appropriated to the People of this Nation, the **Dominion and Command** over thoſe Paſſages, becauſe without that *Maritime Power*, they muſt always be Expoſed; whereas no ſuch *Neceſſity* pertained to Countries lying on the Continent, which had other Means of Converſing one with another.

Mercator Added, That Trading Ships would ever be *Expoſed* on the Ocean to Pyracies, Plunders and Inſults; and therefore he propoſed, That it ſhould, in all Times, be Obſerved, and Adhered to, as a *National Maxim*, in all the Conſultations of the Three Eſtates, as well in as out of Parliament;

I. That the *National Sovereignty and Dominion* of the Seas, which ſurround the Borders of this Iſland, be Aſſerted and Vindicated; and that ſuch a *Navy of Ships of War* to ſupport that Maritime Power, be provided and maintained, as may, like an *Army of Moving and Floating Forts and Caſtles*, Repel Invaders, and carry Terror to the Enemies Coaſts, in Diſtant Regions.

II. That as **Trade** muſt always continue, and Dangers in the Ocean, either from publick Enemies, or private Pyrates, will be perpetual, ſo the **Floating Power**, or **Naval Forces**, ought to be kept always *ſtanding*.

III. That the COMMANDS of our Fleets and Squadrons, be (in all Caſes) kept in and confined to the Hands of *Britiſh* Natives, and ſhould never be Given up, or Truſted in the Hands of Foreigners.

To which General Propoſitions, the **Whole Aſſembly** Aſſented, and thereupon Reſolved, and Directed, That the ſame ſhould be Incorporated in, and be, and become *Unextinguiſhable Principles* or *Maxims of State* in this Government, from

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from which the Politick Councils ſhould never Relax, Recede, or Deviate.

As to the Second Matter propounded by *Britannus*, touching *Land Forces*, *Agricola* Roſe up, and Declared his Opinion:

That Nothing could be more *neceſſary* to the Government (they were now Inſtituting) for its Support and Preſervation, than occaſional **Armies**, or National Forces to be raiſed, when **Neceſſity** required, or called for a General and United Aſſiſtance; but what were to be the Qualifications, Uſe, and Managemenr of ſuch National Forces, required Mature Deliberation.

That this **Conſtitution** could never be *Subverted*, or fall into Danger of being Subverted, but by *Standing Land Forces*, in Times of Peace; For that the **Being** of Standing Land Forces, was Compoſed of Two Ingredients, *viz. Their Pay*, and *Obedience*; For the Commander muſt **pay** his Army, becauſe upon that Depends their *Subſiſtence*; and the Army muſt **obey** their Commander, without Reſerve or Asking Queſtions; For without *That*, no Army could be Uſeful.

This being the Nature of Standing Land Forces, he proceeded, and ſaid, If the **Senſe** of the Land Forces ſhould differ from the *Senſe* of the Two Eſtates of Lords and Commons, or if the Parliament ſhould refuſe to *Provide* for ſuch Forces; it is obvious, That thoſe Forces, being *Armed*, may Compel (or have Power to Compel) a Compliance with their *Senſe*, or Diſperſe the *Unarmed* and *Naked* Parliament; For what Parliament, being Awed by *Armed* Forces, could, *Without Arms*, freely Debate or Reſolve, or Make Proviſion for good Government?

Agricola took upon him to preſage, and ſay, That no Miniſters would, in future Times, be ſo Formidable and Dangerous, as thoſe whoſe Counſels, and Arbitrary Adminiſtrations would *provoke* the People to become *Diſorderly*; becauſe when the **Governed** ſhall, by theſe Means, be driven into *Diſorders*, Standing Land Forces would become *Neceſſary* to ſupport Illegal Meaſures: He Added, That when Military Forces ſhould be kept long Standing, that Courſe of Life would become Habi-

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tual, and the Soldiery would Claim Proviſions, as wanting any other Ways of Livelihood: And therefore nothing would become more Diſtaſtful to Military Men, than a View of **Diſbanding**; and conſequently, if the Captain General and his Army ſhould *Conſpire*; the Army, to make the Captain Powerful; and the Captain, to gratify the Army; the Naked Power of this Conſtitution would become precarious. Many other Things were ſtirr'd and argued, not only touching Foreign Mercenaries, but touching the Cauſes of War, too long to be Enumerated.

Upon this Important Debate, the Aſſembly Agreed in theſe Reſolutions, and Ordained;

I. That a Power ſubſiſting on Armed Land Forces, in Times of Peace, without the Conſent of the Two Eſtates in Parliament Aſſembled, ſhould be Deemed *Inconſiſtent* with this Conſtitution; Becauſe the **Power** will Reſt in the Armed Gentlemen; when the **Authority** of Parliament is Naked.

II. That all Land Forces to be Raiſed for Defence or Offence againſt Foreign Invaſions, or for Suppreſſing Domeſtic Rebellions; ſhould be Compoſed of *Britons*; and not of Foreigners (except in Caſes of National Treaties) Becauſe Foreigners, when Called in, may, if they find an Opportunity, Aſpire to be Maſters.

III. That the **Diſbanding** of Land Forces, as ſoon as Peace ſhould be ſettled, ſhould be Deemed a Matter of Juſtice due to the Nation; unleſs ſuch *Disbanding* ſhould, on Account of Imminent Danger and Neceſſity, be *Reſpited*: Of which Danger the Two Eſtates of Lords and Commons in Parliament Aſſembled, being the *ſole* Paymaſters, and the Principal Sufferers, in Caſe of real Danger, ſhould be the *ſole* Judges.

IV. That in Regard Proviſion is already made for Standing *Naval Forces*; all Dangers of Invaſions from Abroad, muſt neceſſarily Diſappear.

SECT. XVI.

THE laſt **Privilege** or Qualification of the Two Eſtates of Lords and Commons, or of the Parliament, that came under the Debate of the Aſſembly, and which required an Explanation, was propounded by *Britannus*, *viz.* What POWER ſhould

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be left as a **Latent**, or Reversionary **Power**, to Reside and Remain in the Two Estates of Lords and Commons, in Cases of Accidental, Incurable, and Irremovable Incapacities in the Supreme Governor, to Exercise or Execute and Administer the Government, such as Infancy, Natural Disabilities, Captivity, or a Total **Cession** by Abdication, Renunciation, Resignation, or by a **Total Failure**, or Extinction of the Intended Royal Family *for want of Issue* (in Case they should Declare the *Succession* to the Government to be Hereditary) ; in all which Cases, and others of the like Nature ; the Nation might be reduced to its Original Principles, as it was before the Convening of this **Assembly**, *viz.* to be void, and without **Form** of Government ; or, at least, That the *Form* Instituted by this Constitution, would be Deformed, Altered, and Subverted ; or, for a Time, Dissolved ; and therefore **Necessity** Required, That a Power and Capacity should be Reserved, and proper Provisions, should be made, for Cases of this Nature, although the same might appear Superfluous, or not fit to be supposed ; because the Contrary would Infer an Incapacity in the Government, to support and preserve itself.

Britannus therefore Proposed, and accordingly, it was Unanimously Consented to, and Declared by the whole Assembly, *Nemine Contradicente*, That it should be an *Inherent* and *Inseparable* Quality and **Power Essential** with this Constitution, That in all the Cases aforesaid, and other such like Cases, the Two *Estates* of Lords and Commons should, and might provide, and have not only a Capacity and Power, but **Authority** to provide, proper Remedies to Obviate and Prevent the *Mischiefs* and *Inconveniencies* Accrewing from such Defects of Government ; and also to *Reinstitute* the First Estate (in all Cases) whenever the Throne becomes *Vacant* ; and that this Declaration should for ever be an Essential and Unextinguishable Qualification, and Part of this Constitution.

All which Resolutions and Ordinances, were Ingrafted, and made Essential, Perpetual, and Unalterable Parts of this Constitution.

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SECT. XVII.

THESE Things being Settled and Determined, the next Things that were to be Deſcribed and Inſtituted, were the REGAL OFFICE, and the Duty of it, and what *Rights* and *Prerogatives* were neceſſary to be Annexed to the Crown, and from thence to be Imparted to the Supreme Governor or Monarch that ſhould wear it.

Here *Britannus* ſhrunk back, Declaring, himſelf *Unequal* to the Undertaking; but in regard he had in the Beginning Poſtpon'd them, as if he were able to Adapt them, not only ſuitable to the other Parts of the Conſtitution, but to Repreſent them in Terms fit to be *Decorations* of the MAJESTY of the Chief, and Firſt, and moſt Excellent of the **Three Eſtates**; he ſaid, he would Attempt to Deſcribe them, and hoped the Aſſembly would Obſerve as he proceeded, and ſupply ſuch Matters, in which he ſhould appear Defective.

He thereupon Attempted to Deſcribe the Monarchy, and the *Regal Office*, in this Manner; he ſaid, That the Buſineſs, and End of this Office, was to Exerciſe and Adminiſter the Regal Power, in Guiding and Governing the People of this Nation, for the Good of the whole Body, in ſuch Manner as ſhould be Agreeable, and According to the Rules and Laws which, for that Purpoſe ſhall be Agreed on and Preſcribed; and to Aſſent and Agree to the Making ſuch New Laws, and to the Changing and Altering ſuch Old Ones, as the Two Eſtates of Lords and Commons ſhall find Neceſſary, and prepare for the Good Government and Protection of the People and Nation; and that therefore the Monarch, who ſhould be placed in the Supreme Regal Office, ſhould be Deemed and Accounted the Supreme Governor; and that many of the *Vertues* and *Perfections* attributed to the GREAT CREATOR, who Governs the Heavens, the Earth, the Seas, and all Things therein, ought, in a Human and Subordinate Senſe, and Similitude, to be *Attributed* to the Perſon placed in this *Supreme Regal Office*; ſuch as *Fortitude*, *Goodneſs*, *Juſtice*, *Mercy*, *Wiſdom*, and *Activity*.

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That by FORTITUDE, was meant Valour and Courage, in Regard the Intended King was to be the HERO and Captain of the People, to Inſpire and Animate them with a Valiant Example, to Protect and Defend them againſt Invaſions, Depredations and Injuries of their Foreign Enemies, when Threatened, or Intended; and to Revenge ſuch as ſhould be done and perpetrated.

That by GOODNESS, was meant a Beneficent Inclination to do all the Good he could, to ſuch as ſhould want his Bounty or Aſſiſtance.

That by JUSTICE was meant, the cauſing Right to be done to the Injured and Oppreſſed, the Inflicting on the Wrong-Doers, deſerved Puniſhments, and the performing his own Promiſes and Engagements: Adding, That when nothing elſe can ſhake a Subject's Adherence and Fidelity, yet a Partiality in point of Juſtice, or a Slighting and Undervaluing of Services done in Diſtinguiſhing Seaſons, would be generally Attended with Conſequences mixed with Vexation; If new Services, in Critical Times, happen to be again Wanted, he Declared, That Juſtice would Appear to be the Richeſt and Faireſt Jewel that could be placed in that Crown which was to be provided.

That by MERCY, was meant a generous Pardoning Offenders, and Mitigation of Puniſhments, in ſuch Caſes where the Publick Weal ſhould not ſuffer; Affirming, That whenſoever Mercy and Favour, to particular Criminals and Offenders, would Encourage others to Offend, and Prejudice the State or People in General; there *Mercy* to one Man, would become Cruelty to Multitudes: On the other Hand, Mercy, in ſome Caſes, eſpecially in Caſes, where no body but the Crown is Concerned, would Gratify many; and ſometimes create Friends, who, at ſeaſonable Times, may Afford Important Services and Aſſiſtance.

That by WISDOM was meant, not only a Provident Foreſight and Proviſion, againſt Impending Dangers, but a Judicious Management of his other Virtues; in Regard the Exerciſe of Courage, Beneficent Inclinations, Juſtice and Mercy, without a Diſcerning and Seaſonable Application of them, would make

make those Vertues seem quite other Things than they are in their own Nature.

That by ACTIVITY, he meant Industry, and Watchfulness in the whole Administration: But, above all, *Britannus* Added, That the Power and *Trust* to be Lodged in the Regal Office, by which the STATE was to be Guided and Conducted, would be well Illustrated, and made Plain, by an Example of an Inferior Nature, *i. e.* by the *Powers* and *Trust* Reposed in a Master of a Ship, whose Office and Duty is to Guide, Conduct, and Sail at Sea, according to the Rules of Navigation, for the Good and Safety both of the Ship, and of the People and Goods in it; but that in every Ship there is usually a **Pilot**, whose Power and Office is, to Sound, and Try, and Search for the Depth of the Water, and find out Dangers, either from Rocks or Shoals of Sand; and in that Case, to Controul and Govern even the Governour himself, by Steering to Avoid Wreck, and the Stranding or Bulging the Ship in Dangerous Places; **So, in like Manner**, continued *Britannus*, the Powers to be Intrusted in the *Regal Office*, by which the State is to be Guided and Conducted, are Powers to **Execute** and Administer Justice and Mercy amongst his Subjects, and to Espy out and Discern real Dangers, Distinguishing Enemies from Friends, and Exercise his Great Powers and Trusts, according to the *Forms* and *Rules* of Government by this Constitution prescribed and Instituted, **Remembering**, in the First Place, That the Basis on which the Government Subsists, is the Calling and Assembling the Two Estates of Lords and Commons in Parliament, who would be those sure Pilots to be Inquired of and Consulted, and whose Advice and Counsel in all Difficult Cases of *State*, and especially touching Dangers, and the Means to prevent them, ought to be Taken and Followed. Secondly, That such a Proceeding will be attended by these Advantages, That the Intended King will be Careful never to Ask of those *Pilots* any *Advice*, but in such Designs as will Apparently be for the Publick and General Interest of the People; in Regard those Counsellors will, by being Asked Advice and Assistance, become **Judges** too, to Approve, or Disapprove his Undertakings. And, Thirdly, That whatsoever Advice those Counsellors Give, they will *Enable* the Intended Monarch to make it Effectual; than which, the *Governor*, or *Governed*, could Desire Nothing more Happy or Glorious.

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Britannus, in this Place, Repreſented, That in Regard the Intended King was to be placed in the higheſt Sphere, from whence he was to View and Diſcern Dangers; againſt which, proper **Defences** ought to be made; which *Defences*, if Engaged in, and not Strongly and Effectually made, might become Dangerous, and, poſſibly, Ruinous to the whole State and Nation; he therefore propounded, That it might be Inſtituted, in Caſe any ſuch Danger ſhould Appear, or be Alledged to Appear; the Intended King ſhould not, upon the Foot of his own Power or Strength, Undertake or Engage in ſuch **Defence**; but that it ſhould be, in that Caſe, Incumbent to Call, and Aſſemble the other Two Eſtates in Parliament; Impart to them the Nature of the Danger, and Require of them, Firſt their Advice, and next their *Aſſiſtance*, to the End the National Power may be **United**.

The Whole Aſſembly Agreed, *Nemine Contradicente*, and Reſolved and Ordained, That the Matter of this Propoſition ſhould be, and become a Qualification Inherent in, and Inſeparable from, the Intended Kingly Office.

Britannus after this, propoſed, That it ſhould be Eſteemed and Taken, That the MAJESTY of the Intended Monarch, and the Regal Office, would be then moſt *Illuſtrious*, and in the Higheſt Exaltation, when he ſits in Parliament on the Throne, Arrayed in the Royal Robes, with the Crown on his Head, and the Sceptre in his Hand, and from thence Speaks to his People concerning the Arduous and Grand Affairs of the Kingdom, or Gives the Royal Aſſent to the Making and Altering Laws or Rules for the Good Government of the State and Nation.

Britannus Added, and Accordingly it was Reſolved, That the Supreme Dignity of the Intended King, ſhould Impart ſome Rays of Majeſty to his Wife, the QUEEN; That ſhe ſhould be Exempted from thoſe Diſabilities which, by Reaſon of *Coverture*, Attend other Women; and therefore ſhe ſhould have a Capacity, not only to Purchaſe, but to Alien and Diſpoſe of Lands and Goods, and to Plead and be Impleaded in Actions and Suits of Law, in her own Name, as Amply as if ſhe were a Feme Sole, or Unmarried, without being Obliged to have the Name

Name or Conſent of the King her Husband, joined with her, to Enable her to deal in thoſe Tranſactions.

Britannus propounded to the Aſſembly, The Conſideration of the Political Capacity of the Intended King; (to wit) how the ſame ſhould be Deemed to Commence, and Continue, and how to Determine; and whether the ſame might be Severable from the Natural.

In Anſwer to this Queſtion, it was, without Difficulty, Reſolved and Agreed, by the Aſſembly, That in Regard thoſe Two Capacities could not, in the Ordinary Method, Commence together; but muſt, by Accidental and External Means, Meet and Unite; ſo they might, by Accidental Means, Diſunite and Divide; for, doubtleſs, the Natural Capacity of any Perſon may, if he pleaſeth, Demiſe, or Diveſt himſelf of the Political: But as to the Regal Office, or Monarchical Eſtate itſelf, That was to be Perpetual, *aut in Actu vel Potentia*, and to continue Unalterable for ever, and never to be Diſſolved, or Annihilated.

SECT. XVIII.

HE propounded to their Conſiderations, What **Eſtate** or **Intereſt** the Intended King, as Supreme Governor, ſhould have in the Government? whether an *Eſtate* for Life only, ſo that, upon his Demiſe, there ſhould be a New Election?

The Majority of the Aſſembly Objected, That **Elections** of Kings, would Introduce a Complication of all Manner of Evils, and thereupon it was Reſolved, That the Intended King ſhould *not be Elective*.

Britannus then propounded, to the Aſſembly's Conſideration, the Nature of the Monarchy or Kingly Office, and of the Propriety which the Intended King ſhould have in the Government; *viz.* Whether the ſame ſhould be an **Indiviſible**, or a **Diviſible** Office; he Repreſented, That if the ſame were Diviſible, then, whether the ſame, or any Part of the Monarchy or Government ſhould be *Alienable*, or *Diſpoſable* by him, either in his Life Time, or at his Death, by Deed or Will; that is, Whether the Intended King might make, another King of any Part of the Nation, or Divide the Monarchy, or Grant away,

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or Alien, or Diſpoſe of *any Part* of the Nation, or of *any Part* of his People, or of *any Part* of their Allegiance, to any other Perſon or Perſons? or, Whether the Intended King ſhould, or might Grant, to any Perſon, **Power**, or Ability to Do, or Execute, in the proper Name of that Perſon, any Acts of Royalty, or of the Supreme Government, ſuch as in his *own Name*, to *Create* Corporations, *&c.* without the Concurrence of the other Two Eſtates in Parliament Aſſembled?

Upon this Queſtion, without Debating the Matter, it was Unanimouſly **Reſolved** by the Aſſembly, That the Kingly Office, or Supreme Government ſhould be **Individible**, *i. e.* There ſhould be Unity, or a Monarchy, in Oppoſition to Multiplicity or Diviſion; and that the Intended King ſhould not have ſuch a Propriety or Intereſt therein, as to be Alienable, or Diſpoſable to any other Perſon, either in his Life time, or at his Death, by Deed or Will; and that ſuch Intended King ſhould not have Power to Make *Another King* in any Part of the Nation; nor to *Divide* the Monarchy; nor to Grant away *any Part* of the Nation, nor *any Part* of his People, nor *any Part* of their Allegiance; nor to Grant a Power or Ability to any Perſon to *Do* or *Execute*, in the proper Name of that Perſon, any Acts of the Supreme Government, without the Concurrence of the other Two Eſtates in Parliament Aſſembled.

Britannus Obſerving, That ſince the Aſſembly would not have the Kingly Office, or *Monarchy*, or Government, to be *Diviſible*, nor the **Succeſſion** thereto to be Elective, nor Donative, nor Teſtamentary; He propounded, That the Right of **Succeſſion** to this Monarchy and Government might be *Hereditary*, Deſcendible to the Heirs of the Body of ſuch Intended King, as ſhould be Firſt Declared: To which all the Aſſembly Agreed.

But *Britannus* Surmized this Difficulty, and Deſired Leave to Reiterate what was before Surmized, *viz.* That if the Whole Family and Deſcendants of the Perſon to be Declared King, ſhould, for Want of Iſſue, fail, and be **Extinct**, What particular Remedy or Courſe was, in ſuch a Caſe, to be provided?

In Anſwer to which, *Agricola*, and the Whole Aſſembly, readily Expreſſed their Sentiments, That the Power and Right of *Reinſti-*

Reinſtituting the Regal Eſtate, in ſuch a Caſe; or the Power of *Declaring* a New King, and Giving him a like *Hereditary* Right, would, and ſhould, in ſuch a Caſe, neceſſarily **Revert** and **Devolve** back upon the Two Eſtates of Lords and Commons, to be, in a full and free Convention, for that Purpoſe Aſſembled.

SECT. XIX.

BRITANNUS, in the next Place, propounded this *Grand Queſtion*, Whether the Right of **Succeſſion** to this Monarchy, or Monarchical Eſtate, or intended Government to be now Inſtituted, ſhould be an *Indefeazible Hereditary Right*, or a *Limited Hereditary Right*, to have a Duration and Continuance, with the Truſt Tacitly Repoſed therein, and ſo long as the Original Contract to perform it, ſhould be obſerved.

This Propoſition occaſioned Great Debates; but the Arguments advanced by ſome, to ſhew how an *Indefeazible* Hereditary Right to this Government, could be conſiſtent with this Syſtem of Government, or wholſome to the People, can, at this Diſtance of Time, neither be Remembred, nor Preſumed, nor Imagined: However, this Grand Queſtion opened a large Field for Diſcourſe.

Britannus therefore Attempted to Explain the Word *Indefeazible*, *viz.* That it was compoſed of the Three Adjectives, *Feazible*, *Defeazible*, and *Indefeazible*. That by the Word *Feazible*, was Deſcribed the Nature of Human Actions, whether ſuch or ſuch a Thing, were poſſible, by the Wit or Power of Man, to be Compaſſed or Effected; That it was a Word Applicable to Human Actions only, becauſe all Things are *Feazible*, or *Poſſible*, with that **Power** that made All Things out of Nothing; in whoſe Hands the Heavens and the Earth are not *Indefeazible*.

That the Word *Defeazible*, meant an **Ability** to unmake, or undo a Thing, which, by the ſame, or an Inferior, Power had been before made; and that by the Word *Indefeazible*, was meant the contrary; that is a *Diſability*, or Want of Power ſo to do.

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In this Place, ſome of the Aſſembly took Notice, That in their *Formation* of this Conſtitution, they had Inſtituted the Subſtantial Form thereof, to conſiſt of the *Three Eſtates*, and had divided between them the Abſolute and Legiſlative Power, and had taken upon them, to make the ſame the Baſis of Government, and to be *Unalterable* and *Indefeazible*; and that from thence it might be Argued, That they had Aſſumed to do, what was above Human Power to Effect; and that ſince they had, in, ſome Things ſo Attempted, it might be as Reaſonable in this Caſe, to Inſtitute an *Indefeazible* Quality, or Hereditary Right, to be Inherent in the *Succeſſion* to this Monarchy or Government.

Britannus, in Anſwer to the Firſt Part of his own *Grand Queſtion*, touching the *Indefeazibility* of an Hereditary Right, Admitted, That they had indeed Reſolved and Agreed, That the Original Form of the Government, to Conſiſt of the Three Eſtates, ſhould be Unalterable and *Indefeazible*: For this Reaſon, becauſe that *Form*, was to be the Fundamental Baſis, and many other Parts of the Government, were to be Original Pillars built on that *Baſis*, and that therefore the *Whole Structure* might poſſibly Tumble down and be Diſſolved, if they had Admitted of the leaſt Notion of a *Power*, to *Alter* that Form, or that *Baſis*, or thoſe Pillars; becauſe the Notion of ſuch a *Power*, would be no other than to mix in the Conſtitution, a *Latent* Quality, that would Moulder away its very Foundations and Exiſtence.

But then *Britannus* Argued, That Every *Right* or Capacity, which was of human Inſtitution, might (like Clay in the Hands of the Potter) be Formed, Extended and Limited in ſuch Manner as would beſt Suit with the whole *Compoſition*: He Argued, That the *Three Eſtates*, Compoſing this Government or Great Body, of which the *Monarchical Eſtate* was to be the Head, was to conſiſt of Natural Perſons; and therefore ſaid, that if the *Natural Perſons* Compoſing the *Ariſtocratical Eſtate*, or Houſe of Lords, ſhould all of them Die, and be Extinct, yet that *Eſtate* might be Reinſtituted and Repaired, by the *Power* Given to the Regal Eſtate, to make New Creations of Noblemen: He Added, That if all the *Natural Perſons* Compoſing the *Democratical Eſtate*, or Commons of the Nation, ſhould Die, and be Extinct; it might be ſaid, The whole Conſtitution,

tion would, in ſuch a Caſe, be Diſſolved; however, that, That Caſe, was a Caſe too remote to be Suppoſed, or Argued upon. *Britannus* Proceeded, and Argued, That although the *Monarchical Eſtate* conſidered politically, as the moſt Excellent of the Three Eſtates, was the *Genus*, and, as ſuch, was to be Unalterable and *Indefeazible*, yet the *Natural Perſon* to be firſt placed in that Monarchical Eſtate, and the *Natural Perſons* to ſucceed thereto, as Monarchs, and their Rights to that Succeſſion, was a Species, or Secondary Matter, which might now be made Ceaſable, and Limitable, and Determinable, in ſuch a Manner, as might beſt Tend to the Preſervation of the whole Syſtem.

He Reaſon'd, That if the Aſſembly's *Human Power*, could Inſtitute the Subſtance, *viz.* The *Monarchy*, or Monarchical Eſtate, as the Head, and moſt Excellent of the *Three Eſtates*; it muſt neceſſarily have Power to Mould, or Faſhion, and Limit the Rights and Extent of it (and eſpecially that Important Hereditary Right of *Succeſſion*) how, and in what Form would be moſt conducive to the Main Deſign.

He Urged, That the *Beſt Right*, that any of the intended Kings could have to this Monarchy or Government, muſt neceſſarily be derived from this Original Conſtitution; and that therefore an *Indefeazible* Hereditary Right of *Succeſſion*, would be Inconſiſtent with the whole Contexture; becauſe there might ariſe Princes, who might Diſlike the Form, and the Truſt tacitly Repoſed in the Regal Office, and for that Reaſon, might Renounce and Demiſe the Government; but could not Diſſolve the Monarchical Eſtate itſelf; for that was to be Indiſſoluble and Indefeazible.

He alſo Intimated, That ſuch an *Indefeazible* Hereditary Right of *Succeſſion*, as was contended for, might occaſion this Nation to become a Province to *Gaul*, and bring it into Subjection, to the Arbitrary Government, of that Great and Powerful Country, than which, nothing could be more Calamitous.

As to the Second Part of the Grand Queſtion, which Introduced into the Intended Hereditary Right of Succeſſion, a *Limitation*, or a *poſſible Ceſſion*; *Britannus* Argued, That the Regal Office or Government would be under the like *Truſts*, tacitly Repoſed in it, and the like Duties and Obligations, in Relation to the Per-

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Performance of it, as other Offices of Magiſtracy; and that the like Limitation might be Annexed to this Office, as was Annexed to the Firſt Man *Adam*'s Enjoyment of the Garden of *Eden*; that is, he ſhould Live in that Glorious Place, and Enjoy the Fruits, Felicity, and Government of it; during ſo long Time only, as he ſhould *Abſtain* from Eating of the Tree of Knowledge of Good and Evil; therefore the intended King might, as *Adam* did, diſlike the Truſt, and ceaſe to perform it: And that ſuch a **Breach**, or **Ceſſion**, being an Act of the Will, may be Diſcovered and Expreſſed, either by Word, or by Deed, in Writing; or by Facts inconſiſtent with the Being and End of that Office, and of the *Truſt* Repoſed in it; becauſe the Doing an Act *Inconſiſtent* with the Being and End of a Thing, is a formal Renunciation of that Thing.

He therefore Declared his Sentiments, That the *Hereditary Right of Succeſſion* to this Monarchy and Government, ſhould be *Limited*; to have a *Duration* and Continuance concurrent with the Truſt tacitly Repoſed in it, and with the State-Contract to obſerve that Truſt, or the Terms of the Conſtitution, and a Determination with it: And that a *Vacancy* of the Throne, and ſuch a Determination of the Truſt, and of the State-Contract, ſhould enſue and commence together.

Britannus's Arguments prevailed, and thereupon it was unanimouſly Agreed, and Statuted by the Aſſembly, That the *Hereditary Right* of Succeſſion to this Monarchy and Government, ſhould be a *Limited Hereditary Right*, to have a Duration and Continuance, concurrent with the Truſt tacitly Repoſed in it, and with the State-Contract, to obſerve the Terms of the Conſtitution; and that a *Vacancy of the Throne* ſhould commence, when that Truſt, and that Contract ſhould ſo determine; and that the two Ariſtocratical and Democratical *Eſtates of Lords and Commons* ſhould, in ſuch a Caſe, and when all other Means failed, have Authority (being in a free and full Convention Aſſembled) to Reſtore the Conſtitution, and to **Reinſtitute** the Regal Eſtate, and to fill again the *Vacant Throne*, by Calling thereto, ſome Meritorious Prince of the Royal Family, inveſting him with a *like Limited Hereditary Right*; and that theſe Reſolutions ſhould be, and become Fundamental, Eſſential, and Immutable Principles and Parts of this Original Conſtitution.

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SECT. XX.

THE next Thing which *Britannus* propounded to the Conſideration of the Aſſembly, was, The Settling ſuch **Revenues** as ſhould ſufficiently ſupport the Dignity, Grandeur and Majeſty of the Regal Government, and of the intended King that was to Execute it.

To this Propoſition, the whole Aſſembly, *Nemine Contradicente*, Agreed, and, for that Purpoſe, they Aſſigned and Allotted to the Regal Government or Crown, Great **Revenues** in Honours, Manors, and Lands, for the Support of the Royal Dignity: And in order to Augment and Encreaſe the Crown Revenues, the **Aſſembly** Inſtituted this Prerogative or Rule of Property, *viz.* That all Lands, in which no Subject could make, or ſhew a Title, or Property, ſhould fall as a Perquiſite to the Regal Government; and that all the Forfeitures of the Lands of all Offenders convicted of Treaſon or Rebellion, and all the Lands of any Subject dying without Heirs, ſhould accrew to the Government: Which *Revenues* appear to have been very Great, by that Antient and Inconteſtible Record in the Exchequer, called *Doomſday Book*.

Britannus then propounded Two Queſtions to the Aſſembly, touching theſe Land Revenues, *viz.*

I. Whether the Lands coming once to the Regal Government or Monarchy, ſhould go to the next Succeſſor in Poſſeſſion of that Government, or to the next Heir in Blood, in caſe ſuch next Heir in Blood ſhould not be Poſſeſſor of the Regal Government?

Upon this, ſome Debates aroſe, but nothing extraordinary happening, it was Unanimouſly Reſolved, That all Lands once annexed to the Regal Government or Monarchy, whether by the preſent Endowment, or coming to the intended King, by Purchaſe with his Money, or by Deſcent from any of his Anceſtors, or by Gift from any Subject, or by Forfeiture for Treaſon, or by *Eſcheat* from any Subject, for want of Heirs, ſhould for Ever go and Devolve to the next Succeſſor, in Poſſeſſion of the Regal Government; and that he ſhould be Seized of the

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Abſolute Fee-ſimple and the Inheritance thereof, and that the ſame ſhould not go or deſcend to the next Heir in Blood, in caſe ſuch next Heir in Blood ſhould not be *Poſſeſſor* of the Government.

Britannus next propounded this other Queſtion, touching ſuch Government or Crown Lands, *viz.*

II. Whether the intended King in Poſſeſſion ſhould have the Prerogative, or **Power** of **Alienation**, or Granting away of any Part of thoſe Government or Crown Lands, or *Revenues*, or be Reſtrained from ſuch Alienation?

Divers warm Debates aroſe upon this Queſtion; ſome of the Aſſembly inſiſting, That if the intended King ſhould have Power to Grant away his **Land Revenues**, the ſame, in Proceſs of Time, might be ſo diminiſhed, that the Honour and Dignity of the Regal Government, could not be maintained without asking Aids, for that Purpoſe to be *Impoſed* on the People, and that ſuch a Taxing of the People ought, by all Means, to be Avoided.

Britannus, in Anſwer to theſe Objections, urged, That it was unreaſonable to Diſable the Intended King, to reward ſuch of his Subjects, as might poſſibly do for him, and the Nation, Signal Services; and that Rewards being the Motives to the moſt hazardous Enterprizes, the intended King of this Nation ought to have Ability to give thoſe Rewards: But the main Reaſon given by *Britannus*, for Inſtituting in the Crown ſuch a Power of **Alienation**, was, That it was a Prerogative which would tend to the Preſervation of this Conſtitution, and of the Peoples Liberties; becauſe he laid it down as a **Maxim**, That *Dominion was founded in Property*, and that he that had the Greateſt Share in **Property**, would have the Greateſt **Power**, and moſt Dependants; as was Evident to all Men, by the *Dominion* that thoſe Gentlemen (pointing at the Nobles having great Poſſeſſions) had over their *Neighbours*.

Britannus further Argued, That the Regal Government would have ſo many Ways of Acquiring Lands, that if it had not a Liberty of *Alienation*, it would, in a few Generations, *Acquire all the Lands* in the Nation, and conſequently, ſuch a *Reſtriction* of Alienation would tend to the Subverſion of this Conſtitution, and to the Enſlaving of the People. *BRI-*

TANNUS

TANNUS being warm in this Matter, proceeded, and told the Aſſembly, in moving and ſtrong Expreſſions, That if ſuch a *Reſtriction* were once admitted, Times might come, that Provident and *Aſpiring* Kings might ariſe, who obſerving that the very **Original Conſtitution** had left open a Door, by which they might legally and ſafely enter, and evade the Force of the whole Deſign of it, and make themſelves *Powerful Enough* to cruſh the other Two Eſtates, *viz.* by laying aſide ſome *Competent Part* of their large Revenues, to Purchaſe Lands.

Britannus ſhewed how 100,000 *l.* or 200,000 *l. per Annum*, being laid aſide to purchaſe Lands, the intended King would be able, not only to acquire every good Purchaſe that Offered, but even to impoſe the Price on them; for when the intended King had once offered a Price, what Subject would dare to bid upon him? Or, If any Man ſhould attempt to wreſt the Purchaſe out of the Royal Hands? What Aſſurance could ſuch a Man have, that he ſhould not ſuffer for his Audacity.

Whereupon the Aſſembly being convinced by *Britannus*'s Reaſons, they unanimouſly Reſolved, and Inſtituted, That the *Prerogative* and Power of *Alienation*, of any Part of the Land Revenues, ſhould be Inherent in the Regal Government, and ſhould be an Unalterable, Perpetual, and Fundamental Article, and *Part of the Original Conſtitution*, never to be Impaired or Aboliſhed.

SECT. XXI.

THE next PREROGATIVE to be ſettled, was the Supreme and Sovereign **Power of Aſſembling**, Proroguing and Diſſolving of Parliaments; which are to be underſtood to be always in **Being**, or *in Potentiâ*; and to be only *Aſſembled*.

He Repreſented this Power as the Higheſt Truſt, that could be Repoſed in the Regal Dignity; and the Higheſt Prerogative that the Supreme Governor could Exerciſe, becauſe it was not only the **Baſis**, but the *Pabulum*, or *Materia Prima*, to feed, and give Strength and Vigour to all the Motions of Government, and to the Powers of this Nation.

But

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But he Stated to them a Difficulty that would, in Proceſs of Time, probably ariſe, and happen (*viz.*) That Times might come, when Evil Miniſters would adviſe the intended King, to do ſuch Things as would Appear to be Breaches of this Conſtitution, and, by them, bring upon the People, unjuſt Preſſures or Sufferings, which would naturally breed in the intended King, an Averſion, or Unwillingneſs, and in his Miniſters, a Fear, to *Aſſemble* and meet Parliaments; and conſequently, the Execution of that Truſt, by Calling and *Aſſembling* of Parliaments, would be omitted and avoided; or if Aſſembled, their Power and Privileges would be Broken and Eluded, and the Nation, during long Intervals, would languiſh under Grievances, and ſuffer great Inconvenience and Want of Juſtice.

And as to the Calling of Parliaments, he diſtinguiſhed between *Elections* of New Parliaments, and *Continued Seſſions* of the ſame Parliament, which introduced the Matter about *Diſſolutions* of Parliaments; and as to that, he told the *Aſſembly*, That Times would probably come, when Parliaments, being continued as ſtanding Parliaments, without *New Elections*, might Entertain Sentiments, and Judgments of Things ſo different from the Senſe of the Nation, as to ceaſe to be its true Repreſentatives, and therefore Diſſolutions, and New Elections would become neceſſary; and Recommended the Whole to the Conſideration of the Aſſembly.

As to the Inconvenience of *Long Intermiſſions* of Parliaments, ſome of the Aſſembly Aggravated that Miſchief, as a moſt *Provoking* Grievance, That a Nation ſhould have *Means*, and be intituled to Means, *viz.* by Parliaments, to obtain Juſtice in the Dernier Reſort, and amend Defects in the Government, and yet be with-held from Uſing thoſe **Means**, ſo Eaſy and Pleaſing, to Redreſs their Grievances; They urged therefore, That Proviſion might be made, that if the intended King ſhould omit, or neglect to call Parliaments, at ſuch and ſuch Stated Times, then **Power** ſhould be lodg'd in the Hands of ſome others, to do that Thing which the intended King himſelf had neglected.

Others propoſed, That *New Elections* of Members of Parliament, ought not to be too frequent, by Reaſon of the Violent and Unaccountable Emulations and Animoſities, which the ſame

ſame would create amongſt the Competitors and their Friends; and as to the too long *Continuance* of the ſame Parliament, ſome ſuggeſted one Sort, and others other Sorts of Limitations of ſuch Continuance; and, upon the whole Matter, much Confuſion and Irreſolution appear'd in the *Aſſembly*.

Britannus Obſerving how theſe Debates paſſed, Roſe up, and Delivered his Senſe to the Aſſembly, That he thought the Inconvenience would be too great, to give a **Power** to any other Perſon or Perſons, to become a *Partner* with the Supreme Governor, in ſo inſeparable and incommunicable a Power, or Authority, as to Aſſemble Parliaments in his Default; becauſe it would Diminiſh the Honour and Dignity of the intended King, in the very Point of his Sovereignty, and in the Eyes, not only of the Subjects, but of the Neighbouring Nations, when they ſhould ſee a Companion with, or a Check impoſed on the intended King himſelf, in the Higheſt Part of his Regal Dignity and Prerogative, and therefore *Britannus* propounded, That this Sovereign Power ſhould be Lodged *Solely* in the Supreme Governor, as in a Reſervoir, in Truſt, and as the Grand Diſpenſer of this Political Food to the Nation.

But *Britannus* here Interpoſed a Notion of his own, which might tend to a good Uſe in After-times, *viz.* That if ever it ſhould happen that the Government or *Crown-Revenues in Lands*, ſhould be ſo far Leſſened by Alienations, that there would be a Neceſſity to grant other Revenues, by Impoſitions on Merchandizes, *&c.* to be paid by the People, for Supporting the State and Government; the Parliament might, in ſuch a Caſe, add a Condition or **Limitation** to ſuch Grant, that if Parliaments ſhould not be Called and Aſſembled, and permitted to Sit, during ſuch Limited and Stated Times, then ſuch Grant of thoſe Impoſitions ſhould Ceaſe and Determine; and, in ſuch Caſe, that Remedy would be Effectual, becauſe every Man would readily and eaſily take Advantage, of a Breach of that **Condition**, by refuſing to pay the Duties, without any Injury to, or *Coertion* on, the Royal Power; and the intended King, in that Caſe, could have no Reaſon to Complain of any Loſs or Hardſhip; becauſe the **Grant** would Ceaſe and Determine, by Reaſon of a Neglect on his own Part; but *Britannus* mentioned this Caſe by the Bye; and as an Hypotheſis.

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Britannus further Repreſented, That it would be a ſtrange and unnatural Thing to ſuppoſe, That their own Houſes of Lords and Commons, being their own Repreſentatives and *Truſtees*, ſhould, for any Conſideration, be drawn into any Intereſt contrary to **That** of their Country, which they could never be led into, without Becoming, at the ſame time, Enemies to Themſelves, their Children, Neighbours, and Poſterity.

Britannus therefore propounded theſe Qualifications, in Relation to Parliaments, to be Inſtituted, as Fundamental and *Eſſential Parts* of the Conſtitution, which, in his Opinion, would at preſent, be ſufficient **Provisions** to be made in that Matter, *viz.*

I. That the **ſole Prerogative** of Calling and Aſſembling Parliaments, and of Proroguing and Diſſolving them, at Convenient Times, ſhould be, and be Deemed a Truſt, to be Executed by the intended King only, and by no other.

II. That in Regard, it is before Ordained and Statuted, that the *Aſſembling* and Sitting of Parliaments, ſhall be Deemed and Accounted, not only the **Baſis**, but the Materials to Feed and Give Vigour, to all the Motions of this Government, and to the Powers of the Nation, and was therefore to be a Matter of **Juſtice** due to the Nation ; and that a Failure therein, ſhall be a Failure of Juſtice ; that therefore it ſhould be Incumbent on the intended King, to be Declared, as Part of his Kingly Office, to Call and Aſſemble Parliaments **frequently** ; that he ſhall continue them Sitting, to Do and Diſpatch the National Buſineſs, and to make ſuch **Provisions** for Good Government, as they ſhall chuſe and deem Neceſſary ; and that the intended King ſhall be Obliged to meet and Reſide, and Adviſe with his Parliaments, and Give the Royal Aſſent, to the Making ſuch New Laws, and Altering Old Ones, for the Good Government and Safety of the State and Nation, as his **People**, in Parliament Aſſembled, ſhall chuſe and agree on : Which would Appear Reaſonable and even Neceſſary, in Regard, it was already Ordained and Statuted, *That no Law ſhould be Introduced by the King, in either Houſe of Parliament*, Except General Pardons as aforeſaid ; and that the Execution and Exerciſe of this Grand Prerogative, ſhould be Equally Incumbent on the Regal Office, as to Appoint Judges for the ordinary Adminiſtration of Juſtice, after the

the Manner herein after Inſtituted: But, above all, *Britannus* Argued, That this Sort of Aſſembling, and Holding Parliaments would be a Debt, due in Juſtice to the Regal Dignity itſelf, becauſe that Proceeding would Invigorate, and Compleat its own Political Being and Power; whereas the *Pourtraiture* of the Intended King, Governing either without, or in Terms of Diſagreement, with Parliaments, would Appear to all Men, Meagre and Decrepid: His Power would be neither Lov'd, or Aſſiſted at Home, nor Feared Abroad.

III. That the Subjects ſhall have a Right and Liberty to Petition the intended King, to Call and *Aſſemble* Parliaments, and to Do all Things, in the Article next above Specified; and that ſuch Subjects as ſhall *Contravene* the Matter of ſuch Petitions, by Remonſtrating or Addreſſing to the contrary, ſhall be Deemed **Betravers** and Subverters of this Conſtitution, and of the Liberties of *Britain*, and ſhall be Treated after the Manner that Common Enemies are uſually Treated.

All which Propoſitions, were Unanimouſly Agreed to, and, by the Aſſembly, were *Ordained* and *Statuted* to be, and become Fundamental and **Eſſential** Parts, of the Original Conſtitution.

Britannus further Adviſed, That this **Memorandum** ſhould be Added to thoſe Reſolutions; That nothing would more ſwell the *Diſcontents* of the People, or fill them with more or greater Animoſities and Impetuoſities, when they meet together, than the Grievances and Failure of Juſtice, which ſhould be at Firſt occaſioned, and after continued, without Redreſs, by Reaſon of long Intermiſſions of Parliament; becauſe ſuch a Proceeding would be a With-holding that Food which was provided to Nouriſh, and Give Life and Vigour, to all the National Operations both of King and People.

Britannus further propoſed, That the Making Proviſions for *Reducing* to certain Stated Times, the Calling, Sitting and Diſſolving of Parliaments, might be Adjourned and *Reſpited* till future Times; when unexpected Accidents might make that Matter become neceſſary to be Provided for.

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SECT. XXII.

BRITANNUS, in the next Place, propounded to the Aſſembly, That theſe *Reſplendent Prerogatives*, ſhould alſo be Annexed to the Monarchy, or Supreme Governor, *viz.* That the intended King, as the Head, ſhould have the whole Executive Power of the Laws, and to take Care of the Adminiſtration of Juſtice; and that he ſhould neither Deny, nor Delay, nor Sell Juſtice to any Man.

He further propoſed, That the intended King ſhould have the ſole Appointment, and Nomination, of all his Judges, and Miniſters of Juſtice, his Miniſters of State, his Admirals, Generals, and all other Officers in the Government, both Civil and Military, to be Taken and Choſen out of the moſt Meritorious of his People.

He alſo propounded, That there ſhould be Annexed to the Monarchy or intended King, as the Repreſentative of the Nation, the **Power** of Making all National Treaties and Alliances, with Foreign Potentates; and alſo the *Power* of Making War and Peace; in all which, eſpecial Care ſhould be taken of the Honour and Safety of the Nation; with this Declaration only Subſcribed thereto; That the intended King ſhould always Remember, That no War could be well begun or ended, or Peace made or concluded, without the Advice and Concurrence of his Grand Council in Parliament, firſt and fairly had and obtained.

And, that the **Perſons** and **Eſtates**, of all Subjects Diſabled by Infancy, Ideocy, or Lunacy, ſhould be under the more immediate Care, and Protection of the intended King, as the Supreme Guardian and Father of his Country.

All theſe Propoſitions, ſo moved by *Britannus*, with their ſeveral Limitations and Explanations, were heard with Pleaſure, and Agreed to, and it was Unanimouſly Reſolved by the **Aſſembly**, that each and every of them ſhould be, and become Articles and Parts of this *Original Conſtitution*.

SECT.

SECT. XXIII.

BRITANNUS Obſerving to the Aſſembly, That they had fixed in the Crown the Fountain of *Juſtice*, he therefore propounded, as a neceſſary Part of the *Conſtitution*, That a Fountain of **Mercy** ſhould be alſo Opened, and that the *Power* of Pardoning Offences, would be not only a very uſeful, but a very Bright *Jewel* in the Crown; intimating further, That ſuch a Power could not be Depoſited in any other Place, without the Diminiſhing the Royal Dignity.

This Propoſition occaſioned in the Aſſembly, many Speculations, touching the Crimes that were to be *pardoned*.

Agricola, the Notable Commoner before Named, in ſome Heat, Objected, That an Abſolute Power of **Pardoning**, looked like an Abſolute Power of *Diſpenſing*, and would render Ineffectual the Whole, or any Part, of theſe Conſtitutions; for an Abſolute Power, to *Pardon* all Manner of Offences, without Reſtriction, would Looſe and Diſſolve all the Obligations and Ties, which could Secure the Obſervance of theſe Conſtitutions; in Regard ſuch a *Power* would not only extinguiſh all Fear of Breaking, but even Encourage, the **Breach** of them, as well on the Part of the Supreme Governor, as his Agents, becauſe the Monarch may poſſibly, in ſuch Breaches, become both *Judge* and *Party*; and if the Crown can *Pardon*, it can Juſtify, whatever Crimes and Offences, thoſe Commiſſioned by it, ſhall Commit; For every one knows, that an *Offender*, who is pardoned, is made a Juſt Man, and is put into the ſame Degree of Juſtice and Right, as if he had never Tranſgreſſed; And therefore (Added he) The Monarch, or intended King, under this Apprehenſion, may **Err**, in making ſuch miſtaken Steps, towards the Aggrandizing his own Power, and Oppreſſing the People, as otherwiſe, would never have been Thought of, or Attempted.

He proceeded, and ſaid, That on the Part of the Malefactors, it would Incourage them to Depend on Impunity, and to Execute Commands, without asking Queſtions.

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Agricola ſuggeſted, That out of his good Intentions towards the Monarchy, he thought, that ſuch an **Unlimited Power**, ought rather to be Declined than Deſired; becauſe, in all Probability, it would Involve the intended King in Unhappy Neceſſities, either to *Pardon* and Juſtify ſuch Evil Miniſters, as Executed Illegal Commands, or elſe render his Government Contemptible, by Denying to ſuch Miniſters their *Pardons*; For, ſaid he, what Man will ſerve a Maſter, who, having *Power* to Pardon and Juſtify his Servant, ſhall yet Abandon him to the Puniſhments, his mere Obedience incurr'd?

Whereupon this Objection of *Agricola*, was, by great Numbers of the Aſſembly, Supported with Applauſe, and not without ſome Warm Expreſſions, againſt the Unreaſonableneſs of the Propoſition.

Britannus, in this Difficulty and Ferment of the *Aſſembly*, Roſe up, and Admitted the Subſtance of what *Agricola* had Urged; but then he Argued, That **Mercy** would ſometimes be as neceſſary as *Juſtice*, becauſe no Man could ſo intirely Exempt himſelf from Temptations of ill Company, or from Erroneous and Miſtaken Apprehenſions, in himſelf or others, or from Unfortunate Accidents or Circumſtances; but that, ſome time or other, he might ſtand in Need of **Mercy**: He ſaid further, That the *Sceptre of Mercy* would, in ſome Exigences of State, Effect Great Atchievements, or, at leaſt, prevent the Terrible Effects of the Sword of Juſtice; That the Conſequences of Juſtice, were Fear; but of Mercy, Love: He inſtanced in the Caſes of Rebellions, Inſurrections and Tumults, which, upon Offers of **Pardon**, would many Times be Suppreſſed and Quieted, without Bloodſhed; Whereas, when the Countenance of **Power** looks Inexorable, it will, at the ſame Time, look Cruel and Fearful; and Offenders being Driven to Deſperation, will Contend with Obſtinacy, and without the Blood and Loſs, of ſome of the Braveſt and moſt Valuable Subjects, will not, and ſometimes cannot, be Reduced: He Added, That the intended King's Strength and Power would, in a great Meaſure, ſubſiſt upon his *Power* to *Pardon*; becauſe Rebellions could never be ſuppreſſed by the Sword, without the **Slaughter** and Loſs of great Numbers, as well of the Faithful, as of the Rebellious Subjects; which Slaughter would weaken the Power of the Nation itſelf.

But

But ſince even Mercy, and the Power of *Pardoning*, might produce Bad, as well as Good Effects, *Britannus* Divided the Crimes and Offences, that might happen to be Committed, under theſe Two Diſtinctions, *viz.*

I. Offences that might be Stiled *Crimina Læſæ Majeſtatis.*

II. Offences that might be Stiled *Crimina Læſæ Libertatis*; or otherwiſe, *Crimina Læſæ Conſtitutionis.*

I. As to the Offences, that might be Stiled *Crimina Læſæ Majeſtatis*, *Britannus* Defined them to be, ſuch as were Compaſſing the intended King's Death, the Levying War againſt him as King, the Adhering to his Enemies, *&c.* or elſe other leſſer Offences; ſuch as Breaches of the Peace, by Murdering his Subjects, Breaking their Houſes, and Robbing them of their Goods, *&c.* In all which, the intended King, as ſupreme Governor and Protector of his People, would, in General, be Concerned, as for an immediate Violation and Contempt of his Authority and Government.

And therefore *Britannus* propounded, That it ſhould be declared, That the *Power of Pardoning* Offences of this Nature, ſhould be a Prerogative veſted in the Crown, as the Fountain of *Mercy*, opened and fixed in the Royal Dignity.

This Propoſition being Approved, the Aſſembly unanimouſly Reſolved, Agreed, and Ordained, That this Prerogative of *Pardoning*, and Extending Mercy to the Subject, in Relation to Offences of this Nature, ſhould be a Privilege and *Flower of the Crown*, and one of the *Eſſential* Parts of the Royal *Executive Power*, and of this Conſtitution.

II. As to Offences which might be Stiled, *Crimina Læſæ Libertatis*; or otherwiſe, *Crimina Læſæ Conſtitutionis*: *Britannus* deſcribed them to be Offences, tending to the *General Oppreſſion* of the People, and Inſtanced in ſmall Matters, *viz.* A Nuiſance to Paſſengers, in a Common Highway, Sea-Port, or Haven.

From which he Aſcended to Offences, and Crimes of a higher Nature, tending to the Univerſal Inconvenience and

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Damage of the People : He Named the *Subverting* the Form of this Conſtitution, by Changing the Nature (in Form or Subſtance) of either of the **Three Eſtates**, of Lords or Commons, or of the Regal Dignity, from the Limitted Qualifications aforeſaid, to an Unlimitted **Arbitrary** Power, or *by Adviſing*, or Procuring the Government to be Adminiſtred, **Without** Parliaments, or by *Standing* Armies ; or by *Adviſing*, or Conſulting to *Raiſe or Continue* Standing Armies, in Times of Peace, **without** the Conſent of Parliament ; from which would neceſſarily follow, A Determination, or *Subverſion* of the Conſtitution itſelf. He ſlightly touched upon the **Myſterious** Meaſures Concerted by Evil Miniſters, either at Home, or Abroad ; By which the Power, Sovereignty, or Independency of this State and Nation, may be Diminiſhed or Reduced (or may be in Danger of being Diminiſhed or Reduced) to any *Inferiority*, to the Neighbouring States or Potentates ; *or by which* the whole *People*, might be Oppreſſed, and every individual Perſon Affected and Impoveriſhed, or Wronged, or Wounded in his Perſon, Eſtate, or Trade.

Britannus therefore propoſed, That in Regard theſe **Offences** might poſſibly be either Avowed, Countenanced, Supported, Commanded, or Commiſſioned to be done, by the Regal Power, **or elſe**, That the intended King himſelf, might inadvertently, by Evil Counſel, be involved in the **Fact**, or might Favour the *Offenders*, that therefore **Offences** of this Nature, ſhould not be **Pardonable**, but ſhould be puniſhed, and the Grievance Abated and Removed, notwithſtanding any **Pardon** from the Supreme Governor ; Becauſe ſuch a *Power* would Import a *Power* to Juſtify Proceedings, tending to **Deſtroy** this Conſtitution, and to Change the Fundamental **Form** of this Government.

This Propoſition being Approved, the **Aſſembly** Reſolved, Agreed, and Ordained, That the ſame ſhould be and become, an Article, and Part of the *Original* Conſtitution.

As to the Fountain of *Honour*, *Britannus* Reminded the Aſſembly, That that was before Provided for.

SECT.

SECT. XXIV.

BRITANNUS propounded, That ſome **Impaſſible** Prerogatives or Properties, ſhould be Attributed to the Monarchy, or intended King: And, amongſt others, That it ſhould be always taken in the Underſtanding of the Law, That the intended King **can do no Wrong**, and that no Man **can do Wrong to him.** This Startled the Aſſembly, and many of them roſe up, and Expreſſed their Surprize and Admiration, at ſo wild a Motion; in Regard, that ſuch a Notion, would Exempt the Regal Adminiſtration from the Imputation of any **Breach** of this Conſtitution, altho' every Article of it ſhould be *Broken.*

But *Britannus* Reply'd, and ſhewed, That this **Property**, rightly underſtood, would tend as much to the Benefit of the Subject, as to the Advantage of the Supreme Governor; For whereas, in common Caſes, between Man and Man, Poſſeſſion, and eſpecially a long Poſſeſſion, would be the greateſt Evidence a Man could give of his Property in, and Right to, his *Lands and Goods*; And, therefore, if any Man ſhould *Diſſeize*, that is, Wrongfully *Diſpoſſeſs* another of his Lands, and die ſeized (*i. e.* in Poſſeſſion) of thoſe Lands wrongfully gained, the Lands ought to be caſt by Deſcent, on the **Heir** of the Wrong Doer, who was the laſt viſible and known **Poſſeſſor**; and the Perſon, that had the Rightful Title, ought not, in Reaſon, forcibly to Enter upon the Poſſeſſion, of the Heir of the Wrong Doer without making ſome Complaint, and bringing the ſame in Judgment before ſome Court of Juſtice, to Recover the Lands from the **New Poſſeſſor**; And this Wrongful Poſſeſſion would, in a little Time therefore, (if not Evicted by ſuch Complaint) gain the *very Right*, from the Rightful Owner; ſo great Regard ought to be given to **Poſſeſſion**, and eſpecially to a Quiet and an Uninterrupted Poſſeſſion.

This being the Caſe between ordinary Men,

Britannus added, That the Meaning of this **Property**, or Poſition, was, That altho' the intended King ſhould, without, and againſt **Right**, Enter upon, and take *Poſſeſſion* of any Subject's Lands, yet that POSSESSION, tho' continued for a long Time, ſhould not work a **Wrong**, nor gain any Right, to the Government, nor Extinguiſh, or Wreſt any *Right* out of

the Subject ——And ſo, on the other Hand, The Subject's wrongful Intruſion and **Poſſeſſion** of the intended King's Lands, ſhould not work a *Wrong* to ſuch King, nor Gain, or Wreſt any *Right* from, or out of the Government; and therefore this *Impaſſible Quality* would be uſeful, as well to the Subject, as to the Supreme Governor. He proceeded, and ſaid, It would add great Honour and Reverence to the MONARCHY, if it were underſtood, That the Supreme Governor (*quâ Governor*) cannot **Command** Wrongful or Unlawful Things; As, if he ſhould Command, or Give Licence to a Man, to make a Nuiſance in a Highway; or to do a Treſpaſs to *B*, and that *B*, ſhall not have an Action of Treſpaſs, to Recover Satisfaction for the Injury, or ſhould Grant to a Man Power to be Judge in his own Cauſe; But that all ſuch Commands, and all others of the like Nature, being Wrong and Illegal, it ſhould be Underſtood of Them, That the Command was Unadviſed; And that all Acts done in Obedience to ſuch illegal Commands, ſhall be deemed Null and Void; And that Thoſe Perſons who Execute ſuch Commands, ſhall be looked upon, to do the ſame at their Peril, and ſhall be Reſponſible for the Wrong, without any Imputation of Wrong to the Supreme Governor, if he doth not Avow and Defend the Action, and purſue and perſevere in the **Miſtake**, becauſe the Suppoſition of Wrong, is inconſiſtent with the Supreme Government: Inaſmuch as the Government was Inſtituted to do Right, and protect from Wrong.

This Propoſition of *Britannus* ſo Explained, was Reſolved and Agreed by the Aſſembly, to be an *Impaſſible Property* or Quality, Annexed to the Monarchy or Supreme Governor; but not Eſſential with the Royalty, becauſe this Conſtitution doth not leave the People to be Governed by the Miniſters, but by the intended Monarch.

SECT. XXV.

AT this Period, *Britannus* obſerved, That by theſe tranſcendent Powers and Prerogatives, Annexed to the Monarchy, the Supreme Dignity, would be greatly Exalted; And therefore he propounded, That **Proviſion** ſhould be made, for the Subjects *Liberty and Free Acceſs* to the intended King's Perſon; and to preſent to him their **Petitions**, Addreſſes, and Repreſentations, wherein They might State their *juſt Grievances*, or Want of their juſt Rights; and to Pray him to Grant ſuch their Rights; and

and to Remove and Redreſs their **Grievances**; and, particularly, to pray him to Call and Aſſemble **Parliaments**; or, if Called, to permit them to Sit, and Complete, and Finiſh the Important Buſineſſes, and make wholſome Proviſions, for the Security of the Nation, as often as Occaſion Required, and that ſuch Petitions ſhould be Received, and, in a Reaſonable Time, Anſwered; and that no Perſon ſhould be **Accuſed**, or Charged, with any Crime or Miſdemeanor, for Stating or Repreſenting, in ſuch his Addreſs or Petition, the True Facts which make up or compoſe his *Caſe* or *Grievance*.

This Propoſition Appeared to be, in itſelf, ſo Reaſonable and Neceſſary, that the Aſſembly, without Heſitation, unanimouſly Reſolved, Statuted aud Ordained, That the Matter of the Propoſal, and all the Parts of it, ſhould be, and be Liberally Expounded to be, Fundamental and **Hereditary** Privileges of this People; and moreover Added this Quality to their Reſolution (to wit) That this Reſolution ſhould be Enlarged, and ſhould Extend, in all the Parts of it, to ſuch Petitions, as any of the People ſhould preſent to either of the Two Eſtates of Lords and Commons in Parliament Aſſembled.

SECT. XXVI.

THE next Difficult Matter, that came under the *Debates* of the Aſſembly, was, *Grievances* proceeding from ſuch Acts as might be ſuppoſed to be **Breaches** of theſe Conſtitutions, and the Puniſhments to be Inflicted for ſuch Offences: And here a Diſtinction was made, between *Breaches* on the Parts of the People, whether Lords or Commons; and **Grievances** proceeding from ſuch Acts, on the Part of the intended King, as might be ſuppoſed, to be *Breaches* on his Part, and **Breaches**, which might be ſuppoſed to be made, by all the Three Eſtates.

SECT. XXVII.

AS to **Breaches** of theſe Original Conſtitutions, on the Parts of the Subjects, it was Agreed, and Reſolved, That ſuch **Breaches** as tended to Subvert, or Deſtroy, or Change the FORM of this Government now Statuted and Ordained, or the *Authority* of any one of the Three Eſtates, hereby inſtituted, or to Alter the Manner of the **Legiſlature**, or to Change the MONARCHY before inſtituted, from a Limited to an Abſolute Monarchy,

Monarchy, or to *Imagine* or *Compaſs* the Death, of the Perſon to be Declared King; or to Levy War againſt him as King, or to **Adhere** to the *Enemies* of the intended King, in whom the Nation and Government is to be Repreſented, and who is to be the Guardian of this Conſtitution; or to Adviſe Meaſures, by which the **Power**, *Sovereignty*, *Independency*, or *Trade* of this Nation, may be Reduced to an **Inferiority**, or to the Danger of an *Inferiority*, to any Neighbouring Potentate, or Nation, ſhall be the Offence and Crime called **High Treaſon**; or, otherwiſe, the Higheſt Treſpaſs or Offence againſt the Welfare and Peace of this Nation and Country: and that ſuch **Great Offenders** ſhould be Puniſhed with Death, in a fearful Manner, and with the Forfeiture of their Honours and Eſtates.

SECT. XXVIII.

In this Place *Agricola* propounded to the Conſideration of the Aſſembly, the Inſtitution of proper **Judicatures**, in Cauſes both Civil and Criminal, and of proper *Judges*, to Hear and Determine all Queſtions and Controverſies about the Tranſgreſſion or Violation of the Rules of Right and Wrong, inſtituted, and to be inſtituted, by this Conſtitution; **Urging**, as a Reaſon for that Motion, that whatſoever ſhould be done, by the Governor or Governed, contrary to the Ordinary Rules or Laws preſcribed by this Conſtitution, would be *Arbitrary*; and that whatſoever was Arbitrary, would be *Illegal*; and whatſoever was Illegal, would be *Oppreſſive*; and that therefore **Neceſſity** Required, That **Tribunals**, or Seats of Juſtice, ſhould be provided, where Suits and Complaints for Wrongs, might be made, and Controverſies heard And Determined; Wrongs Redreſſed, and Juſtice Decided and Executed; And the Motion being Seconded and Approved, ſome propoſed, That the whole Matter of *Judicature*, might be Lodged in that Perſon who ſhould be Declared King, and Supreme Magiſtrate; and offered many Reaſons, to Support this *Overture*, inſiſting upon his Power and other High Qualifications, for the Diſpatch of ſuch Buſineſs.

Britannus apprehending the *Judicature*, to be an Ingredient of the Niceſt Nature, and of the Higheſt Importance to preſerve that Firſt Article which was to be the **Baſis**, and alſo the End of this Government; Endeavoured to Repreſent to the Aſſembly, his Sentiments, in a Clear and Convincing Manner.

And

And First he Urged, That the **Judicature** ought not, by any Means, to be Lodged, or Veſted in that Perſon, who was to be Declared King; Arguing, That many Pleas and Controverſies would neceſſarily ariſe, between the intended King, and his Subjects, for Cauſes both Civil and Criminal (to wit) Cauſes for Real or pretended Crimes, ſuch as Treaſons, Rebellions, Murders, Felonies, Seditions, Breaches of the Peace, and other Miſdemeanors; and Claims for real or pretended Titles to Lands; Debts, Duties, Treaſures and Revenues.

That if the intended King were to be the *Judge*, he would be both **Judge** and **Party**; He would be Judge in his **own Cauſe**, and probably would, in his Judgments, pay little Regard to the Rights and Privileges Inſtituted by theſe Conſtitutions; for the **Meaſure** of his Juſtice would neceſſarily either Exceed, or be Defective, according to the Meaſures of his Love or Hatred, or ſuppoſed Love or Hatred, towards the Parties concerned, or, perhaps, towards their Friends or Relations; which would infuſe into the People, Univerſal Diſtruſts, Diſcontents and Diſſatisfactions, and that would *Relapſe* all Things into their Firſt *Original*; For it would be better for the People to have no **Tribunal** of Juſtice, than to have one that is Partial and Inſincere, or Vindictive, or Venal.

That ſuch a *Judicature* would neceſſarily Attract into the Hands of the intended King, that **Arbitrary** Power, which the **Aſſembly** had, with ſo much Care, fenced out, and excluded from the EXERCISE of any Single Perſon or Monarch; That if the intended King were to be the *Judge*, he would, as incident thereto, have **Power** to *Commit* and *Impriſon*, the Perſons of his Subjects, by his own immediate **Command**, which would introduce this Inconvenience, That a Subject might be falſely or unjuſtly Impriſoned, and yet be *without Remedy* to Recover Satisfaction; for ſuch a *Remedy* would be Impracticable, as well as *Inconſiſtent*, with the Nature and Authority of the *Supreme Governor*; becauſe no Remedy could be Afforded, except by ſome Judge **Superior** to the intended King; to ſuppoſe which, would be an *Abſurdity*.

He Argued further, That if ſuch a *Judicature* were inſtituted, this further Miſchief would enſue, *viz.* That if the firſt Judgment ſhould happen to be Erroneous or Illegal, there could

be no **Appeal** to a Superior Judge, to Re-examine or Redreſs the Error or Grievance; and that ſuch a *Judicature*, would Invalidate the Privilege of the **Dernier Reſort** by theſe Conſtitutions before fixed in the Houſe of Peers.

For theſe Reaſons, *Britannus* propounded, and accordingly it was Reſolved and Statuted, That the intended King, ſhould, in all Caſes, be **Excluded** from Judging in his own Perſon, any Man, or any Cauſe concerning Life, Liberty, Property, or any other Matters, and from all **Miniſterial** Parts of Juſtice, in Granting Warrants to Arreſt, Impriſon, or otherwiſe to Moleſt the Subject, before Judgment; and to Render the Judicature Clear, and Impartial, the Intended King ſhould not, in his own Perſon, be Relator, Informer, or Witneſs.

Britannus alſo propounded, That there ſhould be a competent Number of *Judges* appointed to be Diſtributed into ſeveral Courts for ſeveral Purpoſes; and that they ſhould have *Power* to Give, and ought to Give, Judgment in all Caſes before them, without being Obliged to *Reſort to the intended King, for Advice, Inſtructions, or Directions*; and that theſe *Judges* might, for Judgments given *Contrary* to, or Deſtructive of theſe Conſtitutions, be Accountable in Parliament.

He Deſcribed ſuch Courts in this Order, *viz.*

A **Court** for all Pleas, Accounts and Controverſies ariſing between the intended Kings and their Debtors and Accountants, touching the Royal **Revenues**, and the Publick Treaſures of the Kingdom; becauſe it would be *Impoſſible* for any King to do *Equal Juſtice*, where he himſelf would be to Receive all the Fruit and Profit of the Judgment: He added, That the *Judges* of this Court, might be properly looked upon, as the **Sovereign Auditors** of the National Treaſures, Accounts, and Revenues *of the Kingdom.*

II. A **Court** for the **Common Pleas**, and Controverſies between Subject and Subject, touching their Rights, Titles, Properties, and Poſſeſſions of, and in, Manors, Houſes, Lands, and Hereditaments, in which RIGHT ſhould be Done, according to this Conſtitution, and which may be reputed the **Common Forum**, for the Conveying and Transferring of Right in Lands from one Man to another.

III. A

III. A **Court** for the Hearing and Determining of all Proſecutions of the Government, againſt the Government, for Offences or **Criminal Matters**, in which it would be Extravagant to ſuppoſe, That the intended King could, in his *own Cauſe*, Adminiſter to Offenders *Impartial Juſtice*, where he, being the *Party* Offended, will Apprehend himſelf to be Affronted, or Injured in his Perſon, Authority, or Government; And, conſequently, his **Judgments** muſt neceſſarily be **Atrocious**, Arbitrary, and Vindictive, as being Influenced with Rage, Revenge, Fear, or Reſentment: He added, That ſuch as ſhould become **Judges** of ſuch a Court, might be Deemed **Sovereign Juſtices** *of Oyer and Terminer*, and the Sovereign **Coroners** of the Land.

IV. A **Court** wherein ſhould be kept the GREAT SEAL of the Kingdom, under which all *Commiſſions* Giving to Miniſters and Agents the intended King's Authority; All Treaties of Peace and Commerce with Foreign Potentates; All Grants from the Crown to the Subject; And all Original Proceſs of Law, touching Wrongs, or Complaints for Wrongs, or Demands of Right, ſhould, in the intended King's Name, as from a **Fountain** of Juſtice, Iſſue, and Proceed: That the Great Officer *preſiding* in this Court, ſhould have POWER to Hear and Examine all Queſtions about *Grants* from the Government, touching their **Legality** and Convenience. And if they ſhould Appear to be *Illegal*, or that the intended King was Deceived, then to Stop them; and if ſuch Grants ſhould, by Inadvertency, Irregularity, or Surprize, have paſſed the Great Seal, then to Repeal and **Cancel** them; And that the Style of this Great Officer, ſhould therefore be, that of High CHANCELLOR of the Kingdom.

That as to Matters of *Judicature*, he ſhould have a Power and Juriſdiction, upon Petitions or Complaints made to him, to Relieve the Subject againſt Wrongs, Accrewing from *Fraud*, *Accident*, and *Breach of Truſt*; and againſt ordinary *Penalties*, Given as Securities for Payment of Money; in ſuch Manner, as Equity, and Right Reaſon, ſhould Require; or, in other Words, To *Mitigate* the Rigour and Letter of the Law, and in thoſe Special Caſes, to Controul the Law.

But *Agricola* objected, That the Inveſting of this Great Officer with ſuch **Powers**, would bear a Reſemblance too near to that

that Abſolute and **Arbitrary** Power in a Single Perſon, which the Aſſembly had ſo warmly Prohibited and Excluded; And that the *Tranſition* from Mitigating the *Rigour*, and Supplying the *Defects* of Old Laws, to the Making of *New ones*, would be ſo eaſy, that Chancellors may imagine the Power of the Great Seal, to be Abſolute, and above the Laws; and may, by Miſtake, *Diſpoſe* of Mens Properties at Pleaſure; And that therefore, **Neceſſity** Required ſome Proviſion, to Reſtrain an Unlimitted, or Arbitrary Controul over the Laws.

Britannus, in Anſwer to the Objection, Argued, and ſo it was Reſolved, That if there ſhould Appear to be ſuch a *Ground of Equity* in any Caſe, as, according to Natural Juſtice, and Right Reaſon, ought to *Diſable* the Party Complained of, from Taking an Unjuſt Advantage, either of the *Rigour*, or *Defect*, of the Common Law; which, in many Caſes, is, in its own Nature, a **Deaf Tyrant**: Then, in ſuch a Caſe, the Chancellor ſhould have *Power*, and a Juriſdiction, to Decree Relief to the Party Grieved.

But, in all other Caſes, the *Strictum Jus*, or Strictneſs of the Law, would be, and ought to be, Deemed to be, the Right and *Hereditary Privilege* of every Man, which ought not, by any Power whatſoever, to be Taken from him.

And it was alſo Reſolved and Settled, *That* this Court ſhould Adminiſter the King's *Paternal Prerogative*, before mentioned, of being the Supreme Guardian, in taking Care of, and Protecting the Perſons and Eſtates of Orphans, Infants, Ideots, and Lunaticks.

Britannus having Deſcribed theſe ſeveral Sorts of *Judicature*, propoſed, That theſe Superior Judicatures, ſhould have Authority to *Prohibit* and Reſtrain all *Inferior* Courts, whenever they Exceeded their Juriſdictions.

Britannus proceeded to Deſcribe, and Point out, the *Nature of Tryals*, *viz.* What Perſons ſhould be **Judges** of the Truth, or Falſhood of Matters of Fact; and who ſhould be *Judges* of the Law, and Right, when the Facts were Known, and Stated: And for this Purpoſe he propounded, That Noblemen, in all Capital Offences, ſhould be Tried by their Peers; But that, in all other Caſes, Tryals of Matters of Fact, ſhould be made by Juries

Juries of Twelve Honeſt and Lawful Men of the Neighbourhood, where the Facts were Done and Tranſacted; and that all Tryals ſhould be had in open Court; and that all Witneſſes, on either Side, ſhould be openly Examined before the Accuſed, or Adverſe Party, Face to Face.

Britannus further propounded to the Aſſembly's Conſideration, That no Man ſhould be Bound to Accuſe himſelf, nor ſhall be Rack'd or Tormented for Refuſing; which would be a Security, not only to Innocent Men, Injuriouſly ſuſpected; but alſo to Innocent Men, whom the Tortured Man might be Prompted to Accuſe: He therefore moved, That this Propoſition ſhould likewiſe be made a Fundamental Part of this Conſtitution.

Britannus further propounded to the Aſſembly, That the Rights, Titles, and Property, of the intended King, in, and to his Lands, Goods, and Revenues, ſhould be Levelled, Tried, and Adjudged, in Point of Subſtance, by the ſame Laws and Rules of Juſtice, and by the ſame Sort of Juries, as thoſe of the People, Allowing only to the Crown, the Preference in Point of Execution, and ſome other Preferences, in Forms touching Property; not Altering the Subſtantial Rules of Right and Wrong.

He further propounded, That the Judges of the ſeveral Courts aforeſaid, ſhould give Judgments of Law, and Right in all Caſes, where the Facts ſhall be Aſcertained, either by Juries, or be Admitted, or Confeſſed, by the Parties, without taking Directions from the intended King, or Supreme Governor, or any other.

Britannus further Intimated to the Aſſembly, That in the **Judicatures** here propounded, great Power, as well as great Truſt, was to be Repoſed, eſpecially in the Houſe of Peers, in whom the *Dernier Reſort*, and the ſole Judicature of Impeachments were Lodged; And that, therefore, nothing could better Guard the People, or Preſerve theſe Conſtitutions, than to Provide, That theſe *Judicatures* might be kept Upright and Inflexible; And for that End, he propounded, That the Lords of Parliament, or the *Judges*, or *Juries*, ſhould never be Received, or Admitted, to Excuſe themſelves, by pretending, That They, for fear of Death, durſt not ſay the Truth.

He concluded this Matter, touching the Judges, by propounding, That the Laws, and the Determinations to be made by Them, and the Keeping and Performing of the King's Oath to his People, in Relation to the Cauſing Juſtice to be Impartially Adminiſtred, ſhall be always underſtood, to be Intruſted with the Judges; And that the King's Perſon, ſhall be underſtood to be by them Repreſented.

Britannus put the Aſſembly in Mind, That, in Regard the Diſtribution of *Juſtice* was to be the Fruit and Product of this *Conſtitution*, it would be neceſſary, in order to bring Controverſies into Debate and Judgment, before the ſaid Judicatures, to provide ſome *Forms* for that Purpoſe; And therefore he propounded, That Writs (or written Letters) to run in the intended King's Name, ſhould be framed, and to be ſued out, as of Right, and of Courſe, by every Party Grieved; in which ſhould be Contained, A ſhort State of his **Demands**, whether he *Demands* Lands, or Money, or Goods, in Specie, or *Satisfaction* for Injuries Done to his Perſon, or to his Lands, or Goods, or for Breaches of Contract, *&c.* And that the Party Complained of, ſhould be Summoned and Warned, to Appear, and Anſwer thoſe Demands.

But, above all, *Britannus* propounded, That the Written Letters to **Summon** Parliaments, ſhould contain in them Specifically, That the Cauſe of ſuch Summons, ſhould, in all Times, be, to Adviſe the intended King, in the Difficult Buſineſs, concerning his Regal Dignity; and the **State**, or **Condition** and Defence of his Kingdom; and to Act and Do in thoſe Buſineſſes, what ſhould Appear to be Reaſonable, Juſt, and Convenient; to the Intent, the Commons, when Elected, and the Lords, when Summoned, might be ſufficiently Impowered, when Aſſembled, to Inquire and Conſider, not only of the *State*, or *Condition*, and Defence of the whole Nation, but of all the People of it, and of all Matters and Things to them Appertaining; And that the *Eſſence* of thoſe written Letters, ſhould for Ever Continue in that *Form*, without Alteration, Addition, or Omiſſion: And *Britannus* gave, for that Purpoſe, theſe Reaſons, *viz.* That the *Forms* of ſuch Writs, would, in future Times, Inſtruct Poſterity in the Nature of their *Rights*, and of their Remedies to Aſſert thoſe *Rights*.

All

All these Propositions, touching the several **Judicatures** and Tryals, and other the Matters and Proceedings aforesaid, being generally Approved of, the same were Resolved, Agreed upon, and Ordained to be, and become, Original, Fundamental, and Essential Parts of the Constitution.

SECT. XXIX.

AS to Grievances proceeding from such Acts, on the Part of the intended King, as might be supposed to be Breaches of these Original Constitutions;

The REMEDY for them Appeared to be of a Nice and perplexed Nature, and great Doubts and Difficulties arose thereupon, and all the Assembly Agreed, that *Necessity* would call for a Redress, if the intended King should Renounce this Form of Government, as the same is now Constituted, and should Assume an **Arbitrary**, or Legislative Power (without the Concurrence of the Two Estates of Lords and Commons in Parliament Assembled) to *Make*, or *Alter*, or to Dispense with, or Suspend the Original Constitutions or Laws of the Land, or to **Impose Taxes**, and Levy Money, without a **Grant** thereof in Parliament, or to **Keep** Standing Forces in Times of Peace, without the Consent of the other Two Estates, or to **Make War** on his own People, or to *Violate* their Liberty, by Imprisonments, or to *Invade* their Property, by taking from them their Freeholds, or other Goods or Estates, or the Profits of them, *&c.* I say, in these Cases, the Whole Assembly were Sensible of the Mischief or Grievance; because the Subjects **Obedience** to the intended King, in such Cases, would be Inconsistent with this Constitution; for how could they obey in such Things, as would be against Right, and tend to their own Destruction? But how, or by what Means, to Provide an *Adequate Remedy*, to Obviate or Remove those Grievances, was what the Greatest Part of the Assembly Esteemed, in a Manner, *Impossible* and Impracticable.

Some of the Assembly Objected, That if every mistaken Step, or inadvertent Error, in the Exercise or Administration of the Government, should be Charged as a **Breach** of these Original

Original Conſtitutions, there would never want Pretexts for Tumults, Inſurrections and Rebellions.

Britannus, in this Uncertainty, and Irreſolution, roſe up, and Offered his Sentiments to this Effect, *viz.* That the whole CONTEXTURE of theſe Conſtitutions, tended to the Safety and Honour of the Monarchy or Supreme Governor; foraſmuch as if any *Errors* or *Miſtakes* in Government, of a General Nature, ſhould, by the Advice of Evil Miniſters, happen to be made, Tending to the Univerſal *Oppreſſion* or Enſlaving of the People, or to the Change or *Subverting* of this Fundamental Form of Government; the intended King had no more to do, than to Aſſemble the Parliament, and leave the Redreſſing thoſe Grievances to that *Grand Aſſembly*; That the People would never fail to be Thankful for ſuch an Opportunity; That in ſuch a Caſe, the *Clouds* of Diſcontent would certainly fall ſhort of the Monarch, and break upon the Heads of Evil Miniſters; and therefore he Concluded, That the intended King, having an impregnable Fortreſs (the Parliament) to Reſort to, could never want Means to clear up his own Honour, and ſecure his Legal *Authority, and his Safety.*

However, *Britannus* inſiſted, That the intended KING'S PERSON, in his Natural Capacity, was before Agreed to be *Inviolable*, and that therefore, in Reſpect to the Grievances proceeding from ſuch Acts, as might be ſuppoſed to be ſuch Breaches; common Reaſon would Inſtruct the Oppreſſed, to obſerve the Conſtitution, and the Rights of the Governor and Governed, and would teach the Governed to try all *Submiſſive Methods*, to remove the Oppreſſion, and Redreſs the Grievance, and to wait Patiently 'till *Aſſiſtance* ſhould be Wanted; Alledging, That, in Caſes of Want and Diſtreſs, Breaches of Contracts and Promiſes, and eſpecially Acts of Cruelty in Shedding Blood without Mercy, or by Inexorable Impriſonments, Exiles, and ſuch-like, would be Remembred; for Conſcience, in ſuch Times, will be heard, and Adverſity would be ſure to hear of her Errors; therefore, in ſuch a Caſe, an Opportunity would Occur, in which Men might conſider, Whether a Reſtitution to their Freedom, and a Reformation of their Sufferings, ought to Antecede their *Aſſiſtance.*

Britannus added, That his Suppoſitions would appear more reaſonable and probable, from a View of the Innate Propenſity

ſity of human Nature; which, whenſoever it can Act freely, will perpetually and forcibly, move Men to Love, and Follow, and Aſſiſt ſuch **Powers**, as ſhall tend to protect and preſerve, what they Eſteem to be their Rightful Privileges and Felicities; and to do the contrary, in Reſpect to ſuch *Powers*, as ſhall tend to their being Deprived of them: He Added, That when Man was firſt *formed*, the Great Creator planted in his Nature, an Eternal Fear and Enmity to ſuch **Arbitrary Power** over him, as will, or may Oppreſs him, which will for ever make Men Watchful, whenever Time offers the **Means**, to free themſelves from Oppreſſion; and, which is the ſame Thing, from the Imminent Danger and Fear of Oppreſſion.

Theſe Reaſonings of *Britannus* were heard with a profound Silence and Attention, and ſome of the Aſſembly Obſerved, That the Grievances, proceeding from ſuch ſuppoſed Breaches, had been Treated with the Greateſt Tenderneſs.

Upon the Whole, it was Moved and Agreed, That the Aſſembly had no Occaſion to come to any *Reſolution* about Grievances, proceeding from this Sort of **Breaches**; but rather to **Reſpite** this Conſideration, by leaving it as ſufficiently provided for, and ſettled by one of the former Articles of this Original Conſtitution, which being founded on the Principle of Self-Preſervation, hath furniſhed to every Man, a Right to Defend himſelf, and his Poſſeſſions, againſt the Miniſters of **Arbitrary** Power, and to avoid the **Slavery** of him, and his Poſterity.

SECT. XXX.

AS to Breaches of the Original Conſtitution, ſuppoſed to be made jointly, by the *Three Eſtates*, of the Intended King, Lords and Commons, *Britannus*, in this Place only Obſerved, That if ſuch unexpected Things ſhould happen, which would, in a Manner, Execute themſelves, and become immediately inconvenient, ſucceeding Parliaments would Repeal them; but if they were ſuch, as were *Executory and Conſiſted in fieri*, they would Wither, and Diſappear like Muſhrooms, and Loſe their Force by Neglect, and Non-Uſer; and ſo the Aſſembly took no further Notice, at this Time, of thoſe ſuppoſed Breaches, Reſerving the Conſideration thereof, till ſome future Conjuncture ſhould Require it.

SECT. XXXI.

BRITANNUS Obſerving, that in his Apprehenſion, their **Inſtitutions** drew near to a Concluſion, he therefore put the Aſſembly in Mind, That there wanted an **Explanation**, to preſerve Inconſiderate Men from *Miſtakes*, and to guide their Obedience to the *Regal Authority*; for that though the intended King was to be Inveſted with the whole Executive Power of the Laws, and with as great Powers, as could poſſibly conſiſt with the *Peoples Freedom*; and though Rules for the Puniſhment of Diſobedience to him, were Appointed and Directed, yet ſince one of the Firſt Articles of the Conſtitution, did Authorize a **Diſturbance** and Removal of the Miniſters of *Arbitrary Power*; therefore he ſurmized, That Deſigning and Factious Men might, in After-times, Miſconſtrue and Miſapply that Principle, and, under a Pretence of *Diſturbing* the Miniſters of Arbitrary Power, turn it to Countenance **Reſiſtance** and Rebellions againſt the Legal Authority.

Britannus therefore propounded, That there ſhould be Annexed to the whole Conſtitution, this EXPLANATION, *viz.* That it ſhould **Not** be lawful, upon any Pretence whatſoever, to withſtand, oppoſe, or **Reſiſt** the King's **Legal Authority**, inſtituted by this Conſtitution, or his **Legal** Commiſſions, Orders or Commands, Iſſuing from his Regal Executive Power, inſtituted, by this Conſtitution, to be Inherent in the Supreme Government, it being (as he Alledged) a MAGISTERIAL Truth, That ſuch Legal Authority, founded on this Conſtitution, and the King's Legal Orders and Commands, ought to be *Irreſiſtable*; Urging, moreover, That without the Excluſion of ſuch *Reſiſtance*, no Government could Subſiſt or be Practicable; and that ſuch an *Explanation*, would be not only Conſiſtent with, but a neceſſary Support of, every Part of the Conſtitution.

Agricola, in his Argument on this Head, ſhewed the Indiſpenſible Neceſſity of this *Explanation*; foraſmuch as without it, the whole Syſtem and Form of Government, which they had been, ſo Carefully and Warily, Framing and Inſtituting, would be of no Uſe, either for Protecting the Vertuous and Peaceable, or Reſtraining the Vicious and Diſorderly, Parts of the People; but then he Objected this Difficulty, and Demanded a Solution,

viz.

viz. **Who ſhould be the Judge**, Whether the Government be Adminiſtred in an Arbitrary, or Illegal Manner, or by the Legal Authority, and according to the Conſtitution, and Fundamental Form of this Government? And *how ſhould the People Know*, or be Convinced, or Determined, of the Difference? without which, they could never Behave rightly.

To which *Britannus* inſtantly Replied, That that Queſtion was equally Immaterial, as to demand, how the People *ſhould know* the Conſtitutions, or Laws of the Land? which they muſt, of Neceſſity, be preſumed *to know*, or elſe, how could they Claim the Benefit of them, or Obſerve and Obey them, or be Reſtrained by them, or be Puniſhed for the Breach of them? And that, by the ſame Reaſon, that it muſt be preſumed, they know the Conſtitution or Laws, or Original Form of this Government, it muſt be preſumed, they know what is a Breach or Violation of them: He Affirmed, That no Adminiſtration of Government, could be called **Arbitrary**, or Deſtructive to the Conſtitution, until its Violations and Oppreſſions came to be of a General Nature, and to Affect every Man; (that is) Until the Form of the Government, now Inſtituted, ſhall be ſo Changed, as that Change may be Viſible and Apparent to all Men. He Added, That the true Intereſt of the Nation and People, was the *plaineſt Thing* in the World; it was what Every-body in *Britain*, would Find, or Feel, and Know to be Right; And that they would not be long a finding it neither: Whereas ſuch a Suppoſition of Incapacity, or Ignorance, in the People in General, as not to ſee, or know rightly, in ſuch a Caſe, would make it Indifferent, whether there were any Conſtitutions or Laws made for their Security or not; for if they had not Knowledge, or Senſe, to diſtinguiſh *between Liberty and Slavery*; nor to diſcern, when they Enjoyed their Liberties and Properties, or when they were Deprived of them, *it matter'd* not, whether ſuch a Brutiſh, Stupid People, were *Freemen* or *Slaves*.

This Reply, and Method of Reaſoning, not only Silenced the Aſſembly, but furniſhed Matter for an Additional Motion; And accordingly *Britannus* moved, That every Perſon of this Nation, ſhould have a Right, and free Liberty to Inquire into, and Learn, and to Inſtruct himſelf, and others, in every Part of this Conſtitution; and in every one of the Rights, Powers, and Privileges, of each of the Three Eſtates before Inſtituted; to the

the End he might not only Know and Underſtand, but Behave rightly.

The Aſſembly thereupon unanimouſly Reſolved, and Agreed, That the ſeveral Matters of the **Explanation**, as the ſame was propounded by *Britannus*, and of his Motion, ſhould be, and become, Neceſſary, Inherent, and Perpetual Qualities, and Ingredients, Mixed with, and Eſſential to, this Conſtitution, and Form of Government.

SECT. XXXII.

AGRICOLA, laſt of All, becauſe for the Sake of All, moved, That, in Order to Obtain Bleſſings upon the Nation, and upon the Government of it, as it is by this Conſtitution Eſtabliſhed, a Competent **Number** of Men ſhould be ſet apart, whoſe Buſineſs ſhould be *to Collect* and Preſerve the *Divine Laws and Commands*, Received by their Fathers, *Noah* and *Japhet*, and by them Delivered to their Children and Poſterity; *To Read*, and Expound them to the People; *To Preſide* in the Miniſtration of Holy Things, in Celebrating the Divine Worſhip, *in Making* Sacrifices, Prayers, and Thankſgivings, to the Great Creator; And to *Plant*, and Cultivate Principles of *Freedom*, inclining the People to *Obey*, and the intended Kings *to Govern*, ſo as Both might Adhere to, and Support, and Endeavour to Perpetuate this happy Conſtitution.

Britannus Declared, That though he had never heard, that any ſuch Order of Men, had been (ſince the Creation, down to that Time) Inſtituted, but every Man had, by himſelf, Sacrificed and Worſhipped, in ſuch Manner as he had learned of his Fathers, and particularly of *Noah*, who was the Firſt that Raiſed an Altar, and Sacrificed to God, for his Merciful Goodneſs, an Offering of Thankſgiving; yet he thought the *Inſtitution* of ſuch an Order, was NECESSARY to prevent the Falling of the People, into Ignorance and Barbarity, into Profaneneſs, and all Kinds of Wickedneſs; And therefore he Propounded, and, accordingly, it was Reſolved and Agreed, That ſuch an *Order of Men* ſhould be ſet apart, whoſe Office and Profeſſion, ſhould be to Perform thoſe good Things, Enumerated by *Agricola*; That they ſhould be called Prieſts, or *Preſidents* in Holy Things; That Competent *Revenues* ſhould be Aſſigned for their Maintenance; That they ſhould be *Reverenced* by the People, and Treated

Treated with Reſpect and Honour, by the Great Men; That they ſhould wholly Exerciſe themſelves in Affairs which Concern the Spiritual State, and not intermeddle with thoſe relating to the Temporal; And ſhould account it a Material and Neceſſary Part of their Duty and Function, to perſuade the *Governor*, and *Governed*, to obſerve and preſerve, this equal Form of Government; And that this Proportion ſhould be, and become, an eſſential Part of this Conſtitution.

SECT. XXXIII.

BRITANNUS Recollected, and put the Aſſembly in Mind, That, in Regard the Third Eſtate, in the intended Government, was to Conſiſt of a Houſe of Commons, to be *Elected* by the People, to Repreſent them in Parliament, it would be Neceſſary; And, accordingly, he moved and propounded, To make a **Repartition** of thoſe Elections, in different Parts of the Nation; to the End, the Whole might be equally Repreſented; And added, That the intended King, ſhould be *Totally Excluded*, from Intermeddling in, or Influencing ſuch Elections, either by Recommendation, Requeſt, Gift, or Commandment; Neither ſhould that Superlative **Privilege** of the People, be Deemed, to be Derived from, or under, ſuch intended King; in Regard he was Inveſted, with the Supreme Prerogative of Calling, Aſſembling, and Diſſolving Parliaments; And for that End, he ſhould ſend out Writs of Summons, Commanding *Elections* to be made, and the Perſons, when Elected, to Meet, *&c.* But ſhould, in no Sort, Interfere with the People, in the Buſineſs of ſuch *Elections*, either as to the Perſons to be Elected, or otherwiſe: And, for the better Excluding ſuch Regal Influence, *Britannus* propounded, as a moſt reaſonable Proviſion, That ſuch Repreſentatives, ſhould have Reaſonable **Wages** Paid and Allowed them, by their Conſtituents, or Electors, and *by none other*, to Defray their Expences, during their Attendance on the publick Buſineſs, in Parliament.

Agricola Commended the Overture, and moved, and *propounded*, That the Nation ſhould be Cantoned, and Divided into Convenient Provinces, or **Shares** (*i. e.* Shires) to be called Counties; And that the People of each Province, or Shire, ſhould *Elect* Two Diſcreet Men, to be called Knights, to Repreſent them in Parliament; and ſhould Pay and Allow them

Competent *Wages*, to Diſcharge the Expences of their Attendance.

Mercator moved on Behalf of the *Traders*; and ſeconding *Agricola*, he *propounded*, for their Benefit, That each of the Largeſt and Ableſt Sea-Ports, and *Trading* Cities, and Inland Towns, and Boroughs, throughout the Nation, ſhould, in like Manner, Elect *Two Diſcreet Men*, to be called Citizens and Burgeſſes, to Repreſent them, and to take Care of their *Intereſts* in Parliament; and ſhould, in like Manner, Pay and Allow them reaſonable *Wages*; And, that if any Town or Borough ſhould not be Able to Pay the Wages of Two Repreſentatives, then the Election of one Repreſentative only, ſhould be Allotted to that Town, or Borough.

But then he propounded, That when ſuch Repreſentatives ſhould be Choſen for any particular Place, it ſhould be underſtood, That he was intruſted to Act, not only for that Place, but for the Kingdom in General, in Conjunction with his Corepreſentatives.

The **Aſſembly** Approved All theſe Motions, and Reſolved, Ordained, and Inſtituted, That the Matter of all theſe ſeveral Propoſitions, made by *Britannus*, *Agricola*, and *Mercator*, Touching **Elections**, ſhould be, and become, Original, Fundamental, Eſſential, and Inherent Rights, and Privileges of the People of this Nation; and ſhould be Inſeparable Parts of this Conſtitution, never to be Altered, or Queſtioned, by the intended King, as Forfeitable, or Seizable, or Extinguiſhable, for any Matter, Cauſe, or Thing, whatſoever; becauſe ſuch a Notion might tend, to Alter the very Eſſence of the *Legiſlature*.

The principal Terms of the Original Conſtitution, being thus Settled and Stipulated, the next Matter that came under Debate in the Aſſembly, was moved by *Agricola*, and was, What *Method*, and *Means*, ſhould be Contrived, or Formed, by which the Firſt Perſon to be **Declared King**, and all ſucceeding Kings, ſhould Enter into a State-**Contract** with the *People*, and the *People* with them, to obſerve on each Part, theſe Conſtitutions; and to ſecure the Government to be Exerciſed, Adminiſtred, and Obſerved, by the Governor and Governed, according to the **Forms** and Terms above Inſtituted and Preſcribed; to the Intent, each of the Parties might know the Conditions

that

that were to be Obſerved, of which the moſt *Fundamental* was; That the Three Eſtates of King, Lords and Commons, in Parliament Aſſembled, ſhould have, and they only ſhould have, the Power to Make New Laws, and to Alter Old Ones.

Britannus, in Anſwer to this Motion, ſaid, It would be Neceſſary therefore, to Deſcribe the Nature of a Contract; which he Defined to be, *Actus contra Actum*, i. e. ſome Acts to be Done, on the Part of the intended King, in Conſideration of other Acts, to be done on the Part of the People: And ſo, *Vice Verſa*, ſome Acts to be done on the Part of the People, in Conſideration of other Acts, to be done on the Part of the Supreme Governor; and therefore, in Order to Repreſent that Matter fairly, it was Requiſite to Recapitulate the ſeveral Parts of the Conſtitution, before Agreed on and Inſtituted, which he did in this ſhort Manner; That the Baſis and Foundation of the intended Government was to be, That the People ſhould have, and enjoy their Liberty, Security of their Lives, Property, and Freedom of Trade; and for that End, *Three Eſtates* had been Erected, Conſiſting of a King, of Lords, and of the Commons, in whom Jointly was Veſted the Abſolute Power to make and alter Laws, for the Good of the whole Body, with ſome Memento's Reſembling Reſtrictions.

That the Two Eſtates of Lords and Commons, ſhould have ſome *Powers* and *Privileges*, ſpecial and peculiar to *each Eſtate*, and others general, common to Both; and that no Taxes or other Charges, ſhould be impoſed or levied, without a Grant thereof in Parliament.

He proceeded, and Repeated the Great Powers and Prerogatives, that were provided for the intended King, or Kingly Office; That the intended King's Perſon ſhould be Inviolable, and ſhould Repreſent the Kingdom; That he ſhould make Treaties with Foreign Potentates, touching War and Peace; in which it ſhould be underſtood, the Will and Power of the Kingdom was Expreſſed and Comprehended; and that he ſhould have the whole Executive Power of the Government, by his Miniſters and Officers of State, both Civil and Military; and more eſpecially, in cauſing Juſtice to be Impartially Adminiſtred by ſuch Judges, as he ſhould think fit to Appoint, and Intruſt with the

the Performance of his Oath to, and his Contract with, his People.

Britannus, from the Whole, Concluded, That WHAT the intended King was, on his Part, to Do and Obſerve, might be Reduced to this **Form**; That he ſhould give *Protection* to his People, which was a Comprehenſive Office: For, by Protecting them, he was not by himſelf, or any other Man, to Invade, or Injure the Right, Liberty, or Property of any Man; he was to protect every Man from Injuries Done, by his Fellow Subjects, *i. e.* he was to cauſe Juſtice to be Adminiſtred, acccording to the Laws Impartially; and to protect his People from Injuries to be Done, by Foreign Enemies; and in all Treaties and Alliances, the Profit and Advantage of his People, was principally to be Regarded: and he was to Call and Aſſemble Parliaments **frequently**, and Adviſe with them, touching the State, or Condition, and Defence of the Realm: And negatively, That he ſhould not Aſſume, or Exerciſe an Arbitrary Power in Government, by Attempting to Impoſe Taxes, or Levy Money, without a Grant thereof in Parliament; or by Attempting to Diſpenſe with, or Suſpend the Laws, or the Execution of Laws, or by Invading, Breaking, or Violating, any of the Powers or Privileges, of both, or either Houſe of Parliament; or by Keeping Standing Forces, in Times of Peace, without Conſent of Parliament; or by Governing without Parliaments; or by Doing other Things of like Nature.

And as to the Manner of WHAT the People were, on their Part, to Do and Obſerve, he Reduced that Matter to this **Form**; That the People ſhould, on their Part, give the intended King, Honour, Obedience, and **Aſſiſtance**; Adding, That he meant a General Aſſiſtance, to Vindicate him againſt all Indignities, and to Enable him to protect his People.

He Argued, That Protection and Obedience are Reciprocal; and could not Subſiſt, the one without the other; and that this Relation between King and People, Inferred a *Unity* of Intereſt, and that therefore it would be the intended King's *Intereſt*, to protect his People, and theirs, to Honour and Obey, and *Aſſiſt* his Royal Authority; the one being Dependant on the other.

But

But then *Britannus* Repreſented, That as the People's Obedience and Aſſiſtance was to be General, ſo it ought to be **United**, which could not be Done, but in a Parliamentary Way; Adding, That any Honour, Obedience, or *Aſſiſtance* which ſhould be Given *partially*, by any particular Parts of the People; or Parts of the Nation, out of Parliament, would be of little Uſe or Advantage.

And therefore *Britannus* ſhewed, That the *Aſſembling* and Holding Parliaments, would be the **Baſis**, on which the **State-Contract**, and the publick Power, and Security, was to be Founded; becauſe the People's Obedience, was to be Expreſſed, to the intended King, by Obeying his Summons, and Attending him, by their Repreſentatives in Parliament, in Conſidering the publick State and Condition of the Nation, and his Repreſentations thereof; in Adviſing him, touching the *Grandia Regni*, and in Aſſiſting him, with *Aids* and *Supplies* of Money, *&c.* for which Ends, *Neceſſity* Required, they ſhould be truly Informed of the State of the Kingdom; for no Man can, with any Senſe, conſent to Give Publick Aids, unleſs he know the Uſes and Purpoſes, for which they are Wanted and Required.

Britannus having thus Demonſtrated, the Nature of WHAT was to be the **State Contract**, he Suggeſted, That the Perſon whom the Aſſembly ought to Declare to be their King, ought to be ſome one, from amongſt themſelves, who had Aſſiſted in the Framing, and Contriving the Terms of this Conſtitution: And therefore he propounded, That a ſufficient Expedient, or **Form** in this Matter, would be, That it ſhould be Preſcribed, Inſtituted and Ordained, to be an *Eſſential* Quality or *Form* of this Conſtitution and Government, and ſhould, in all Times, be ſo *Deemed* and *Underſtood*, That when the **Firſt** and ſucceeding Kings, Do **Accept** this Government, and the Truſt Repoſed in it, or **Accede** to this Crown by Deſcent, or otherwiſe, and Do **Aſſume**, and Undertake the Exerciſe of the KINGLY OFFICE or Government, That they, by theſe Overt-Acts, Do, by **Implication**, *Accept* and *Aſſume* the ſame upon the Truſts, and upon the Terms, of Making this Conſtitution their Guide, in Executing, and Adminiſtring the Government; and that the **People** ſhall be Underſtood, by the like **Implication**, to Submit to, and be Bound by the Oath of Allegiance to him,

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i. e. to Honour, Obey, and **Aſſiſt** him, in the Form aforeſaid; and that ſuch Acts Evidencing an Acceptance, and Aſſumption of the Government, on one Hand, and ſuch Submiſſion of the People, on the other Hand; ſhall, in all Times to come, be Deemed and Underſtood, to be an **Implied** Original Contract, between the intended King and his People; and that ſuch an Implied Contract, ſhall Be Deemed as Strong, as an Expreſs One.

Britannus further propoſed, That the Firſt, and all Succeeding Kings ſhould be Crowned as aforeſaid, and that, at the Time of their Coronations, they ſhould **Renew** ſuch *Contract*, by taking an *Expreſs* Oath, That they would **Govern** this Kingdom, according to the Laws, and Statutes Agreed on, and to be Agreed on; and that the People on their Parts, ſhould take an *Expreſs Oath*, to bear Faith and True Allegiance to the King, *i. e.* To Honour, Obey, and **Aſſiſt** him, according to the Conſtitution; and that theſe Implied, and Expreſs Engagements ſhould, in all Times, be Deemed, and Accounted to be, the **Original Contract**. In which *Contract*, it ſhould be alſo Underſtood and Implied, (as *Britannus* propounded) That not only Good, but the Beſt, Laws, are Comprehended, *aut in Actu aut Potentia*, either Actual or Potential: Becauſe, Whenſoever the old Laws ſhall be found Defective, or new ones Wanted, Then by Aſſembling and Holding the Parliament, which the Conſtitution Requires the intended King, in Juſtice, to do, ſuch old Laws may be forthwith Amended, and ſuch new Ones inſtantly made, as ſhall be moſt Eligible, by the Two Eſtates of Lords and Commons, in Parliament Aſſembled, who, in Fact, are to be the Objects to be Governed thereby.

Theſe Propoſitions of *Britannus* were Unanimouſly Agreed to; and thereupon it was Unanimouſly Reſolved and Ordained, *Nemine Contradicente*, That the Matter of theſe Propoſitions, ſhould be, and become, an Eſſential, and Perpetual Article, and Part of the Original Conſtitution.

SECT.

SECT. XXXV.

THE Original Conſtitutions, and the Form of this Government being thus Faſhioned, Agreed, and Ordained, and all the Parts of it being Made and Framed, as it were, *in uno Congreſſu*, the Aſſembly Adjourned, for a Reaſonable Time, to make ſuch Repartition or Diviſion of Elections, and ſuch Cantons or Shares of the Nation, and alſo to make and prepare a CROWN, in the Manner Agreed on, and to conſider of ſome **fit Perſon**, whom they ſhould Declare to be their King, and ſo to carry the Original Inſtitutions into Execution.

The Repartition and Diviſion of Elections being made, and the **Crown** being prepared, the Aſſembly met again, at the Time Appointed; and the great Buſineſs before them, being, What Perſon they ſhould *Declare* to be their King, ſome propoſed One, and ſome named Others; againſt every one of which, ſome Fault or other was Objected: At Laſt, *Agricola*, the Notable Commoner before named, roſe up, and Recommended *Britannus* to be their King, and, in Well-compoſed, and Pathetical Expreſſions, Illuſtrated his Perſon, his Age, and Riches; but, above All, his Penetrating and Diſcerning Wiſdom, and Underſtanding; who had, throughout this whole Matter, *Invented* Wiſe, and Juſt, and Equal Expedients, to Solve and Adjuſt their Difficulties: And that therefore, ſince *Britannus* had ſo exquiſitely Contrived and Framed ſuch Good and Juſt Rules of Government, he thought no one could be fitter than He, to be the ſupreme Governor, to Adminiſter and put them in Execution.

The whole Aſſembly concurred with *Agricola*, and thereupon *Britannus* was Unanimouſly, and with great Acclamations, *Nemine Contradicente*, Declared King; after which, ſeveral Antient, Grave, and Learned Men, were, for the Ends aforeſaid, Selected and Appointed to be Prieſts, or *Preſidents*, in Holy Things; And thereupon the Prieſt, by Order of the Aſſembly, **Anointed** *Britannus*, Adminiſtred the Coronation Oath to him, and Crowned him King; And the People took the Reciprocal Oath of Allegiance to this their Firſt King; whereby the **Original Contract** was Made and Compleated.

From

From this Form of Government, and from these Original Constitutions, and the **Original Contract**, Made and Entered into between that King and People to Observe them, it is Demonstrable, That these Original Constitutions, were the Fundamental Form and Measure of the New, and First King's Government; And that *whatsoever* Form, or Sort of Government, should be Assumed or Administred Beyond, or Contradictory to them, was without Authority, and was **Arbitrary.**

On the other Hand, it is also from them Demonstrable, That these Original Constitutions, are likewise the Fundamental Form, and Mode, or **Measure**, of the Subjects Obedience, and are their *Hereditary Privileges*; and that *whatsoever* the Subjects shall do, or refuse to do, that are not contradictory to the Original Constitution, is not a Crime, nor Punishable; for where there is no Law, there is no Transgression.

SECT. XXXVI.

BRITANNUS being thus made King, he First Chose his Counsellors, Judges, Ministers, and great Officers of State; and, immediately after, called his *First Parliament*; and, for that Purpose, he Selected a Competent Number of the Richest, and Wisest, of the People, and Raised, and Created them, to be the Nobles, or Peers, and Summoned them to Meet him in Parliament, at a certain Time, and Place; Appointing them to be called, The **House of Lords.**

And his Majesty also sent out his Writs (or Written Letters) of Summons, Commanding the Commons, in their several *Repartitions*, to Elect their Representatives to Meet in Parliament; in Pursuance whereof, Elections were made, and the Persons so Elected, together with the Lords, came at the Time and Place Appointed, and Attended the King; and thereupon the *First Parliament* was held, wherein this *Form* of Government, and the Original Constitutions, and all the Parts and Terms of it, and the Form of the Original Contract to Observe them, were Confirmed and **Established**, to be the *Original*, Perpetual, Essential, and *Unalterable* Form and Constitution of this Government; and to be the *Hereditary* Privileges of the People of this Nation; and to be, in all Times to come, inviolably Observed,

ſerved, and to be called, **The Law of the Land**; and to be Supreme, or Above All; And that the ſame ſhould have no Controuller (but only the Parliament, in their Legiſlative Capacity.)

SECT. XXXVII.

THIS moſt Noble, Wiſe, and Heroick Firſt King *Britannus*, Reigned long, and Adhered to this Form of Government, and Exerciſed and Adminiſtred his Government, according to theſe *Original* Conſtitutions; and left, at his Death, ſuch a Venerable Fame for his Wiſdom, Juſtice, and Fortitude, that it might be reaſonably **Preſumed**, the Iſland, from him, was named *Britannia*, and the People **Britons**: In like Manner, as, in After-times, the greateſt City and State in the World, was called *Rome*, and the People, *Romans*, from *Romulus*, the firſt Founder.

The **Preſumption** is alſo Strong, that from this firſt King *Britannus*, or whatever elſe was his Name, our Sovereign Lord King *George*, is Deſcended; for though the *Roman Power* being Exceſſive, and Diſdaining any Addition from the Natives, did Reduce the *Britiſh Royal Family* to an Obſcurity, 'till *Britons*, Recovering Strength, caſt off the *Roman* Oppreſſion; yet all the other ſucceſsful Invaders, *Saxons*, *Danes*, and *Normans*, Coveted, and accordingly did, Corroborate their Titles, by Marriages into the Original Stock, or Lineage of the *Britiſh* Royal Family: And, therefore, ſince King *George*, as well as others of that Family, hath been called to the Throne of his Anceſtors, by Virtue of this Fundamental **Form** of Government, and of the Original Conſtitutions, in the Framing whereof, *Britannus* had ſo great a Share; It is, for this Reaſon, not doubted, but that his preſent Majeſty, as he hath, will continue, to Imitate ſo Exemplary, and Glorious a Predeceſſor, in the Execution and Performance of all the Articles, and Parts of the Conſtitution, according to the *Original Contract*, and will Tranſmit the ſame to Poſterity, in its full Vigour, for the Benefit of this Nation, to the lateſt Period of Time.

In this Place it may be proper to take Notice, That from the **Wiſdom**, Appearing in every Part of this Form of Government, or Original Conſtitution, and from the Duration of it, it may be reaſonably Concluded, That the Framing of it, was *Guided*

and Directed, by the Spirit of Divine Wisdom and Providence, and that the same was, by its Influence, **Engraven** on the Minds of *Britons*; forasmuch as, notwithstanding the Injuries of Time, and the Decay of Earthly Things; and notwithstanding the Wilful Endeavours of some of our Kings, to Efface it, by Substracting and Destroying the Records Manifesting it; and notwithstanding all the Vigorous Efforts of the *Absolute Monarchy Men*; and notwithstanding the Confusions and Devastations made, in this Kingdom, by Barbarous Invaders, in several Ages of the World, by which this most Magnificent **Fabrick**, or Form of Government, hath been often Subverted, Defaced, and Overturned, even **Down** to the Foundations; yet it could never be so Eradicated, or Extirpated, but, in Despight of all Opposition, these Hereditary Privileges, and Principles of Free Government, have hitherto sprung Up and Revived, and become the **Means** of Restoring to this People and Nation, their Antient Freedom, Riches, and Power.

It may, with great Truth, be said, That such Kings of this Nation, as have *Adhered* to this Form of Government, or Original Constitution, and have *Measured* their Administration, by the Terms of it, have *Performed* Great and Mighty Things, and *Obtained* many Memorable Victories; but that such Kings as Deviated from them, or directly Broke or Deformed this Form, **never did** any Thing worthy of Fame.

Here the Reader may be Reminded, That the *Absolute Monarchy Men*, continually found Fault with most of the Steps, which the Assembly made in the Formation of this Government; Clamouring, That such a King, as should be Confined to Govern, according to the Rules of the Original Constitution, and having but One Third Part of the Legislature, would be *Inferior* in Dignity, to the Neighbouring Kings, and, consequently, would not meet with equal Respect, or Reverence, in Foreign Countries; but this Party were more than Once fully Answered, That the Government, here intended to be Instituted, was a *Government* by Laws (in After-Times, called, *Imperia Legum*) And,

That the Difference between a King having an *Imperial*, and a King having a *Legal* Power, was Eminent; to wit, That a King, or Monarch, having an Imperial or Arbitrary Power, must necessarily have a Legislative Power, to Impose on his Sub-

Subjects, what Laws he pleaſeth; *To Illuſtrate* which, it was Argued, That ſuch a Power in the King, to Declare what was his Law, implied a Total Want, or Abſence, not only of any manner of Rights, in the Objects (the People) over whom it was to be Exerciſed; but alſo a Total Ignorance, of what were thoſe Laws; in Regard, no Man could know them, 'till the Monarch had Declared them: And, therefore, to the Laws of ſuch a Maſter, if diſliked, Little Obedience would be Paid, but what a Military Force could Exact; And, conſequently, the Subjects of ſuch an Abſolute King, muſt neceſſarily be *Abſolute* Slaves, having Nothing, they can call their Own, if their Imperial Monarch ſhall pleaſe, by a Law of his own making, to ſay, That all their Goods were his; or, which is the ſame Thing, That he has Need of them: but this was the Unhappineſs intended, to be from this Nation Excluded: That, on the other Hand, the King, or Monarch of this Nation, intended to be, by this Conſtitution, Declared, would be *Imperial* in all Reſpects, Equal to the Higheſt of Monarchs, ſave only, in the Legiſlative Power; and in that likewiſe, he was to be *Imperial*, provided, the Two Eſtates of Lords and Commons, Conſented and Concurred in the Making and Altering of Laws; And that **Laws** made in this Manner, would carry in them, greater Authority, and be better Obey'd.

That it was very true, that a King that would **Depart** from this Form of Government, or this Original Conſtitution, and the Laws by it Inſtituted (which were to be his Strength, and Strong Hold) and would **ſet Up** an Arbitrary Government, would become Weak and Indigent, and, conſequently, would be little Eſteemed at Home, and leſs Abroad; but that a King, *Adhering* to the Original Conſtitution, and the Laws of the Land, would be Maſter of the Hearts, Hands, and Purſes, of his People; and, being ſo Strengthened, and at the Head of a Parliament, *Compoſed* of ſuch Subjects, would be **Invincible**, and, conſequently, would Appear in Power and Dignity, *Superior* to any Neighbouring Potentates, and, as ſuch, would be Reſpected Abroad; becauſe, if any of them ſhould preſume to Affront him, with Indignities, or Injure his Subjects, he would have Power ſufficient to Chaſtize their Inſolence, and *Retaliate* their Wrongs with **Vengeance.**

THE

THE EVIDENCE PROVING THE CONSTITUTION.

CHAP. II.

SECT. I.

As to the Evidences *by which the Fundamental Form of this Government, and this Original Conſtitution, and the ſeveral Proviſions and Terms of it, and the* Original Contract *made thereupon, to obſerve it, may be proved.*

THESE Facts may be Aſſerted, as MAGISTERIAL TRUTHS, That there was a Time, when the Government in *Britain*, was *Firſt Formed* by *Britons*, becauſe no others could pretend to do it; That the *Agents* in that Formation of Government, were Rational and Thinking Men; That the *Subject Matter* and Nature of Government, was in the Minds of thoſe Acting *Britons*, as *Clay*, in the Hands of the Potter,

to

to Shape it, in what *Form* of Government they Deemed moſt Uſeful and Honourable; That the Terms and Conditions, which were to be the Fundamental and Eſſential Parts of Government, to be Obſerved as well by the Governor, as by the Governed, were then, at that Time, firſt *Formed* and Inſtituted; That the *Succeſſion* to the Monarchy was one of the moſt Material Parts, of that *Form* of Government, of which moſt Care was to be taken; and that the *moſt Eminent*, Fundamental, and Eſſential *Form*, or Part of the whole Structure, was, That the *Three Eſtates* of King, Lords and Commons, ſhould have, and they Only ſhould have, the Power of Making New Laws, and Altering Old Ones; and eſpecially *ſuch Laws* as concerned the Succeſſion of the Crown.

SECT. II.

THESE being the Subſtantial and Material Parts, or the *Originalia Pacta Conventa*, to be proved;

It is Requiſite, before the Stating of the Evidence, and Proof that is Relied on, to *Premiſe* ſomething of the *Antiquity* of the Forming theſe Conſtitutions, and *what* may be Inferred, from other Things of like Nature, that were done in the Firſt Ages after the Flood; and *what Abatements*, in the Evidence of the Original Conſtitution, have been Occaſioned, by Length of Time; and, more eſpecially, by the many Natural and Accidental Occurrences, which, in ſo long a Series, have Happened, tending to the Obliteration, and Eradication of the Evidences and Records of the Original Inſtitutions; and, *moſt of all*, by the Wicked and Malicious Efforts of *Arbitrary Principles*, by which the very Footſteps of the Liberties and Privileges of this People, have, ſeveral Times, been very near wholly Eraſed and Extirpated.

As to the Antiquity of the Original Conſtitution, of this Government, it may be Reaſonably **Preſumed**, That the ſame was Inſtituted ſo Early, as in the Life-time of *Noah*, who lived 350 Years after the Flood, which Reached until the 98th Year of *Abraham*; for the moſt Antient and Authentick *Hiſtory*, tells us, That, about the 80th Year of *Abraham*, and in the Life-time of *Noah*, there were many Nations Peopled, and many Kings made.

We Read of Nine Kings, *viz.* Four Fighting with, and Overcoming Five, and that *Abraham* betook himſelf to Arms, and Vanquiſhed the Victors. We Read of *Abraham*'s going, upon Special Occaſions, into the Dominions of *Pharaoh King* of *Ægypt*, and into the Territories of *Abimelech* King of *Gerar*, and that he was afraid, that both thoſe Kings, would Violate his Beautiful Wife *Sarah*. We Read, in Story, That *Semiramis*, the Empreſs of *Babylon*, in the Life-time of *Noah*, and within 300 Years after the Flood, Muſtered an Army of Three Millions of Men, and Marched to make War in the *Eaſt-Indies*, where ſhe was met by an Army, raiſed againſt her, much more numerous, and was by them Defeated.

NOW, if ſo many Nations were Peopled, and if the People, ariſing from ſome of the Sons of *Noah*, were Increaſed and Multiplied to ſuch Vaſt Multitudes, even during the Life-time of *Noah*; Why may it not be as reaſonably PRESUMED, That
Speed. that Small Tribe of the Houſe of *Japhet*, which Sprung from his Son *Gomer*, and called *Gumbri*, or *Cumbri*, and which ſpoke the *Britiſh* Language, called *Kumraeg*, or *Gumraeg*, might Travel to, and Seat themſelves in, this Iſland of *Britain*, and Increaſe into a Great and Potent Nation, and Make and Inſtitute the Original Conſtitution, as is above mentioned, even ſo early, as During the Life-time of *Noah*?

This is rendered probable, by *Cæſar*'s Commentaries, who, (in the Hiſtory of his Wars in *France*, which was Written about 1800 Years ago, and whoſe Relations are as True, as his Stile is Perfect) hath Tranſmitted to us this *Teſtimony*, That the THEN ANTIENT Learning, or Fountain of Laws and Government, in theſe North-Weſt Parts of the World, was found in *Britain*; For he Writes, That the Antient and Learned *Druids* in *France*, to whom the Adminiſtration of the Laws, and Government of that Large and Potent Country, Appertained; had Received their Learning from *Britons*: His Words are theſe;
Lib. VI. *Diſciplina Druidum in Britannia Reperta; atque inde in Galliam tranſlata eſſe exiſtimaretur*: ET NUNC *qui diligentius eam Rem cognoſcere volunt, plerumque illò* (*in Britanniam*) *diſcendi cauſa proficiſcuntur*. The True Senſe whereof is, *That in* Cæſar's *Time, it was Judged and Concluded, That the Knowledge and Skill, of the Learned* Druids *in* France, *had been firſt found in* Britain, *and had been from thence brought into* France.

And

And *Cæſar* Gives this Reaſon for that Opinion; Becauſe then, in *Cæſar*'s Time, ſuch *Gauls* as were more than ordinarily Deſirous, to Learn the Knowledge and Reaſon of Laws to Govern well, went over, for the moſt Part, into *Britain*, to be Inſtructed.

The Authority of *Cæſar*, in this Caſe, is an Unqueſtionable Evidence, of the Capacity and Sagacity of *Britons*, in Framing the Original and Fundamental **Form** of Government in *Britain*; and from the Excellency of that *Form*, it may be Argued, That the Divine Wiſdom Guided that Formation: *Lex orta eſt, cum Mente Divina, Menti humanæ Impertita.*

Our own *Britiſh* Hiſtorian, in *Vita Abbatis Sancti Albani*, who Wrote in the Reign of King *William* the Firſt (Vulgarly called the Conqueror) Bears this Teſtimony, That when the Conqueror Waved his Title by Conqueſt, and Entered into the **Original Contract** with *Britons*, as herein after is mentioned, he Engaged to Govern, according to the *Bonæ & Approbatæ Antiquæ Regni Leges*; from which it is Evident, That the Laws of *England* were, at that Time, (about 700 Years ago) **Antient.**

But *Cæſar*, in his Commentaries, is Curious in one Inſtance of thoſe Antient Laws; for he Relates, as a Novelty, probably, at *Rome*, That one of the Antient Laws of *Britain*, was, That when a Man of Quality Died, his Friends and Neighbours came together, to Inquire of the Cauſe of his Death; and if the Wife were Suſpected, of the Death of her Husband, ſhe was Queſtioned by thoſe Neighbours; with a Severity equal to that, Uſed towards Servants: *Et ſi Compertum eſt; Igni, &c. Interficiunt*, i. e. And if ſhe be found Guilty of the Death of her Husband, which is Petty Treaſon, the Wife was Tied alive to a Stake, and Burnt to Death: which is the Law of *Britain*, to this Day.

This Evidence, therefore, of that *one Material Part* of the Body of Laws, for the Government of *Britain*, is, by *Parity* of Reaſon, an Evidence, that the other more Subſtantial and Eſſential Parts of that Body, which were not convenient to be known at *Rome*, were equally Antient; and, conſequently, theſe Proofs may be Deemed, not only ſufficient to Support the **Preſumption** here Advanced, of the *Antiquity* of this Conſtitution,

tution, but to infer a Belief, That, by the ſame Reaſon, that *Cæſar* had been Informed of the Law, for Puniſhing a Wife for the Murder of her Husband, he had been, at the ſame Time, likewiſe Informed of the Law of *Britain*, for the Tryal of her by a Jury, becauſe he makes Uſe of thoſe very Numerical Words [*Et ſi Compertum eſt*; that is, *If the Wife be found Guilty*] which have been Antiently, and Always uſed, in the Law Proceedings, when the Finding a Verdict by a Jury, is to be Expreſſed.

SECT. III.

AND yet, notwithſtanding what is ſaid, ſome **Objectors** will Treat this *Preſumptive* Commencement of the Conſtitution, with the Characters of *Viſionary*, *Romantic*, *Utopian*, *&c.* and as Subſiſting, only in *Imagination*.

The **Anſwer** is, That the Facts, or Things Made and Formed, are preſent with us, and are *Viſible* and *Undeniable*; all that is Preſumptive is, the Names and Qualities of the *Actors*, or *Makers*. However,

Let ſuch Objectors obſerve, That after the Flood, ſo many Nations were Peopled, and ſo many Kings made in the World, even during the Life of *Noah*; and many more ſuch might be Raiſed in the *Life-time* of his Son *Shem*, who lived 502 Years after the Flood, and whoſe Life reached until about Thirty Years before *Jacob* went down to his Son *Joſeph* in *Egypt*: That there were, even during the Lives of thoſe Patriarchs, or Common Parents, *Noah* (and his Three Sons, *Shem*, *Ham*, and *Japhet*) **Wars**, and Rumours of Wars, amongſt their Children, one King Fighting againſt Another; And that therefore, theſe Facts utterly Deſtroy all the Objectors *Patriarchal*, or Parental Schemes, of the Original Right of Kings, to Arbitrary Power; for how could there be ſo many Kings (if the Patriarchal, or Parental Scheme, were true) made amongſt the Children of *Noah*, and of his Sons, during their Lives; and yet he, or any of his Sons, though the moſt Eminent Patriarchs, or Common Parents, are not remembered to have been Kings?

If theſe Objectors will Pleaſe to give an Account, How theſe People, from ſo ſmall an Original, as Eight Perſons, came to Increaſe

Increaſe into ſuch vaſt Multitudes, and to Divide, in ſo ſhort a Time, into ſo many Nations; and how, and by whom, and in what Manner, there came to be ſo many Kings Raiſed, and Made, even in the Life-time of thoſe Patriarchs, *Noah*, and his Three Sons; and how, and by what Means, Part of *Noah*'s Children were Planted in *America*; Then, by the ſame Method, an Account may be given, how the *Britiſh* Tribe came, in ſo ſhort a Time, from *Babylon*, into *Great Britain*, and Increaſed into a Numerous and Potent Nation, and Inſtituted to themſelves a Government, and Declared a King to Govern them, according to the Rules of this Original Conſtitution.

If they ſay, It muſt be *Preſumed*, That the ſecret Effluxes of God's Power, Will, and Providence, cauſed thoſe Miraculous Multiplications, and the Tranſportations of ſome People into *America*, then the ſame **Preſumptions**, are of equal Authority, to Prove and Manifeſt every Thing, that has been Affirmed of the *Britiſh* Tribe, and their Political Inventions and Inſtitutions, as well, as what has been ſaid of the Eaſtern Nations.

But a full Anſwer to theſe Objections, may be, That many Important Truths, both Human and Divine, have been Conveyed to Men, by mere Allegories, and Similitudinary Alluſions, as Appears from many Examples in the *Old*, as well as *New*, *Teſtaments*. Who can Read the Repreſentations, made to *David* by the Woman of *Tekoah*, touching her ſurviving Son, and by *Nathan* the Prophet, relating to the Rich Man's taking the Poor Man's Lamb, to Entertain his Gueſt, without acknowledging, that thoſe Allegories (although there were no ſuch real Actors) were exquiſitely Adapted to *David*'s Underſtanding, and Conviction, when, in the Perſons of others, as in a Looking-Glaſs, he ſaw himſelf, and his own Actions, ſo Lively and Exactly Repreſented?

Whoſe Capacity is ſo Mean, or Contracted, as not to Underſtand and Believe, the Divine Truths, That there is a Heaven, and a Hell, or not to Apply to themſelves, the Divine Admonitions, when they Read in the *New Teſtament*, the Parables of *Dives* and *Lazarus*, Of the Vineyard, Of the Gueſts Invited to the Wedding, To the great Supper, although they Queſtion, whether there ever were, ſuch real Actors, as Men called *Dives* and *Lazarus*; or ſuch real Facts, as ſuch a Vineyard, or a Wedding, or a Supper? All which were made Uſe

of, as Similitudinary Alluſions, to Convey to Human Underſtandings, Divine Inſtructions.

Now, ſince theſe Human Conſtitutions are real Facts, and from themſelves, in a manner, Self-evident, though of the greateſt Antiquity, why is it not Proper, or Rational, to Repreſent in an Allegory, the Origination of them? or why may not real Acts, be Repreſented by Imaginary Actors, or by ſuch Nominal Perſons, as *Britannus*, *Agricola*, and *Mercator*, and the General Aſſembly of *Britons*? And the rather, ſince it muſt be (by the moſt Sceptical) owned, That theſe Original Conſtitutions, did not happen by Chance; but were the Reſults of Thinking, Rational, and Free Agents, ſuch as *Britannus*, *Agricola*, *Mercator*, and the Aſſembly, are ſuppoſed to be; Inventing, Judging, and Chooſing, what Form of Government, they thought would beſt fit, the Temper and Inclination of *Britons*, as is evident from the other Governments, by *Ariſtocracies*, *Democracies*, and Abſolute Monarchies, Inſtituted by the like free Agents, in the *Græcian*, the *Italian*, the *German*, the *Eaſtern*, and other Nations, each Nation Chooſing and Inſtituting to itſelf, what Form of Government beſt ſuited the Genius of its own People. It can hardly be Believed, That any Indifferent Perſon will Tax the Writer, as either Fabulous, or Preſumptuous; for he doth not Feign, that Rehearſeth Probabilities, as bare Conjectures; neither doth he Deprave the Text, that ſeeketh to Illuſtrate, and make Good, in Human Reaſon, thoſe Things which Authority alone (without further Circumſtance) ought to have Confirmed, in every Man's Belief.

From theſe Premiſes, therefore, it may be deduced, That the *Britiſh* Tribe did become a Numerous and Potent People, and had Inſtituted a Form of Government, conſiſting of the Three Eſtates, of King, Lords, and Commons, and alſo theſe Original Conſtitutions, in Point of Time, ſoon after the Flood, and long before the *Moſaical* Diſpenſation, long before the Promulgation of the Goſpel, and the Epiſtles, written by the Saints *Peter* and *Paul*, long before the Biſhop of *Rome* had Uſurped over the Crown, and over the Liberties and Properties of the *Britiſh* People, the Supremacy he pretended to.

Therefore, this Inference is undeniable, that the good Admonitions in the ſacred Writings, are to be Expounded, ſo as to Improve

Improve and Corroborate the Original *Britiſh* Conſtitutions, and not to Alter or Subvert them.

SECT. IV.

THE Antiquity of the Original Conſtitution, being thus Illuſtrated, and, in a Manner, Proved, the next Things to be Conſidered, are thoſe great Abatements that are to be made, in Relation to the Evidences, of its Specific Commencement, and the Proof of the Means, by which the whole Contexture of it was formed.

No one will Deny, That this Nation hath Suffered and Undergone, many Violent Convulſions Within, and many Invaſions of Barbarous People from Abroad, which Produced and Occaſioned many Devaſtations, Burnings and Spoilings, not only of all Things that were Good and Valuable, but even of Records and Manuſcripts (for Printing is but of a late Invention) inſomuch, that one of the Breaches of the Original Contract, and Miſgovernment laid to the Charge of One of our Kings (*Richard* II.) was, That he, to aſſume and maintain an Arbitrary Power in Government, and to Eraze and Obliviate the Liberties of the People, had cauſed the Records, relating to the State and Government of the Kingdom, to be **Deſtroyed**, though it was his Duty, according to the **Truſt** Repoſed in him, and according to the Intent of his Coronation Oath, to have Inviolably preſerved them.

After theſe Things have been Obſerved, it is Expected, That no reaſonable Perſon, will Demand ſuch Evidence of the Original Conſtitutions, as otherwiſe might have been produced, if theſe Things had not happened; or if the Conſtitution had been formed and made, nearer our Times.

Every one believes, that Vaſt and Invaluable Treaſures of Knowledge were loſt, with the Loſs of the Books of *Solomon*, and yet no one can give an Account, of the Reaſon or Means of that Loſs; and therefore, every one muſt admit, that the ſame Sort of Loſs might, in ſo long a Tract of Time, as reaſonably and probably happen to the Records or Memorials of the Original Conſtitutions of *Britain*, as to thoſe Books of *Solomon*.

SECT.

SECT. V.

UPON the Whole, the Fact, that as a Time when a Government was Formed in *Britain*, by *Britons*, muſt be Admitted; ſo the Fact ſeems Unqueſtionable, That the *Form* of Government, conſiſting of the Three Eſtates of King, Lords, and Commons, by whom all New Laws were to be Made, and Old Ones Altered, with peculiar Privileges Appropriated to each Eſtate; was that *Form* of Government, which was at that firſt Time Faſhioned and Inſtituted, and which was to be the Fundamental and Subſtantial Baſis and *Pillar*, on which the Whole Structure was to Subſiſt and Depend.

However, theſe being the Facts and Poſitions Undertaken to be Proved:

The **Evidence**, therefore, that is rely'd on to prove them, is as Clear and Strong, as any other Evidence, that can be produced to prove any other Parts of our Common Laws; for it Ariſes, and Appears, from Antient Cuſtom, and from a Conſtant and Uninterrupted Uſage, of the Actual Exerciſe of every Part of this Conſtitution; that is, That from the Old Times, whereof there are no Memorials to the contrary, the Exerciſe of this Form of Government, and of the ſeveral Proviſions and Terms of it, have been (when Occaſion required) in all Times Uſed and Practiſed; or, in other Words, That there are not *Extant*, any Records or Memorials, whereby that Cuſtom, or Uſage, ſtands Aboliſhed or Prohibited, or ſo much as *Varied*; and that whenſoever the ſaid *Original Conſtitutions*, have been put in Uſe, **ſuch Uſe** hath been, in all Times Approved, and as often as *Neceſſity*, and the Uſual Courſe of the National Affairs required, they have been again Repeated.

This Cuſtom, or Uſage, appears from all the Records, and Memorials of this Nation now Extant.

SECT.

SECT. VI.

As to those Constituent Parts of the Grand Contract, whereby the THREE ESTATES of King, Lords, and Commons, were made the Fundamental Form of this Government, and which Inveſted them **Jointly**, with the Legiſlature, or Abſolute Power to Make New Laws, and Alter Old ones, with all the Powers and Privileges Incident thereunto;

Cuſtom, and Conſtant Uſage, proves this Part of the Conſtitution; for all our Laws, that were ever Made, or Altered, or Suſpended, or Repealed, have been ſo Made, Altered, Suſpended, and Repealed **Jointly** by the THREE ESTATES of King, Lords, and Commons, in Parliament Aſſembled, and in the Manner and Form before Delineated; which Uſage likewiſe ſtands Verified by all the Records of this Nation: Some Particulars whereof, are theſe that follow, *viz.*

The Memorials are Unqueſtionable, That King *William* I. commonly called the Conqueror, ſoon after his Acqueſt of this Government, Aſſembled, and Held the *Commune Regni Concilium*; by which *Latin* Words, the Parliament, or the Two Eſtates of Lords and Commons, were always Meant and Underſtood.

King *John*'s *Magna Charta*, herein after Printed, *Verbatim*, provides for the Calling and Holding Parliaments; Deſcribing them to be the Lords and Commons.

But the ſtrongeſt Evidence is, That at a Parliament holden in the 40th Year of the Renowned and Victorious King *Edw.* III. *Anno Domini* 1366, his Majeſty Informed the Two Eſtates of Lords and Commons, of the Notice he had Received, That the Pope pretended, King *John* had, by a Deed, made a Donation to the See of *Rome*, of this Realm of *England*, and Land of *Ireland*, and had Received and Accepted the ſame back, to hold of that **See**, by Homage, and Paying a Yearly Penſion of 1000 Marks; and that the Pope intended to Cite this King, to do the Homage, and pay the Penſion, and great Arrears of that Tribute; and, in Default thereof, to Excommunicate the King, and Interdict the Kingdom; and therefore the King Required of this Parliament, their Advice, *What* was fit to be done in a Caſe ſo Extraordinary.

This Claim of the Pope, brought into Queſtion, before the Parliament, the Original Powers and Rights of the THREE ESTATES, of the King, Lords, and Commons; and what the King could, or could not do, without the Conſent of the other Two Eſtates.

Whereupon an Act was Introduced into Parliament, which Paſſed the Two Houſes of Lords and Commons, *Nemine Contradicente*, and to which the King gave the Royal Aſſent, whereby it was Declared and **Adjudged**, *That King* John, **or any other King** *of this Nation, could not, without the Conſent of the Two Eſtates of Lords and Commons, put himſelf, nor his Realm, nor his People, under ſuch Subjection; and that if King* John *had ſo done, it was done without the Conſent of the Lords and Commons, and in* **Breach** *of his Coronation Oath* (*i. e.* The Original Contract) *and was therefore, and for that Reaſon,* Null *and* Void: And moreover, *That if the Pope ſhould make any Attempt to Conſtrain the King, by any ſuch Proceſs;* **They** (*i. e.* The King, Lords, and Commons) *would Reſiſt, and, with all their Power,* Oppoſe *the* Roman *Pontiff, and all his Proceedings.*

The Definitive Sentence, or Judgment of this Parliament, given 360 Years ago, hath furniſhed Matter to form this Argument.

That all the **Powers**, of the Kings of this Nation, are to be Known, and Meaſured by the *Powers* of the **Firſt King.**

But the Judicial Determination of this Parliament, hath Aſcertained that Matter, That the *Firſt King* could not, without the **Conſent** of the Two Eſtates of Lords and Commons, put himſelf, or his Realm, or his People, under the Subjection of any Foreign Potentate; for the Words are, That *King* John, *or any* **other King** (which Includes the Firſt King) *could not*, &c.

The Concluſion is therefore Irrefragable, That if the *Firſt King* had not Power, without the **Conſent** of the Two Eſtates of Lords and Commons, to do ſuch an Act, **Then** the Two Eſtates of Lords and Commons, and their *Power*, to Give, or Deny, that Conſent, was Formed, and made Part of the *Original Contract* for Government, at the ſame Time, as the Firſt King's *Power* was Formed; for the *Firſt King's Power*, could not be Bounded, or Reſtrained, but by ſome other Power, which the *Contracting Parties* did, at the ſame Time, Inſtitute and Agree upon.

And,

And, therefore, the Abſolute Power was, at firſt, *Cantoniz'd*, between the three Eſtates, in ſuch Manner, as is before Aſſerted.

This Parliamentary Declaration, or *Definitive Sentence*, being ſent to *Rome*, the Truth and Force of it, Extinguiſhed all the Papal Pretenſions; The ſame, or the like Claims, being never more heard of.

This Statute-Evidence, will ſtand for Ever, Unſhaken, againſt the Ludicrous Engineering of Dr. *Brady*, and other ſuch Pioneers, who wanted not Confidence, to Queſtion the *Authority*, not only of this Statute, and of this Definitive Sentence, of King, Lords, and Commons, but even of King *Henry* III's *Magna Charta*.

To this Evidence may be Added, the Statute of 5° *R.* II. *cap.* 4. *Anno Dom.* 1381, Whereby it is Enacted, *That all Members of Both Houſes of Parliament, and eſpecially the* **Commons**, *who ſhall have Summons to Parliament* (i. e. when they are Elected) *ſhall Come to, and Attend in Parliament, as had been Accuſtomed of* **Old Times**; *and that the Abſenters ſhall be Puniſhed, as in* **Old Times** *had been uſed to be done.*

This Statute is therefore a Strong Voucher, to prove, That the Right of the *Commons* (as the Third Eſtate) was Equal, Coeval, and Coordinate, in Old Times, with the Lords, or Second Eſtate; And that theſe **Old Times** were the Firſt, and Original Time, when this Conſtitution of the Three Eſtates, was at firſt Formed and Inſtituted; for Gainſayers may be called upon, to Aſſign ſome other particular Time (if they can) when thoſe **Old Times** firſt Commenced.

However, no Gainſayer can ſhew any Law, or any Authentick Memorial of any Law, in this Nation, that was ever Made, or Altered, or Suſpended, or Repealed, by any other Authority, or Power, or in any other Manner, or *Form*, than according to this Conſtitution.

This **Negative Aſſertion** Appears to be Eſtabliſhed, by an Act of Parliament, made by all the Three Eſtates; and to which King *Henry* VIII. as the Head, and moſt Excellent Eſtate, gave the Royal Aſſent, *Anno Dom.* 1533, whereby it is Declared, *That this Nation is* **Free** *from any Man's Laws, but ſuch only,*

as

as have been **Deviſed** *by the* **People**, *and* **Originally** *Ordained and Eſtabliſhed by their* **Conſent**.

And by this Statute it was moreover declared, *That the King, Lords, and Commons, in Parliament Aſſembled,* **Repreſent** *the* **Whole State** *of this Realm; and that they, and they only, have the Power to Make New Laws, and Alter Old ones.*

Upon this Statute, it may be Argued, *That when Laws were* Originally **Deviſed** *and Made in* England, *Reaſon and Neceſſity, require every Man to underſtand, That the* Deviſers *and Conſenters, and their Power, had an* Exiſtence *in Time,* **Prior** *to the Law of their own* Deviſing *and Conſenting to.*

But this Statute ſays (and who can deny the Truth of it?) *That there never were in* England, *any Laws, but what were* **Deviſed** *by the* People, *and* **Originally** *Ordained by their Conſent*: The Concluſion, or *Demonſtration*, is therefore Unqueſtionable, that the Two Eſtates of Lords and Commons, by whom only, our Laws have been *Deviſed*, and whoſe *Conſent* was Eſſentially Neceſſary to the Ordaining them, had an **Exiſtence** by the primary Inſtitution, and by the **Original Contract**, before any Laws were *Deviſed*, or Made, or Conſented to, in *England*; and, conſequently, **They** were Conſtituent Parts of the Firſt, and **Original Form** of this Government.

It may alſo be Argued, *That the* whole State *of the Realm, mentioned in this Act of Parliament, doth Include all Orders and Degrees of Men, from the Higheſt to the Loweſt; and that this ſupreme Declaration hath Silenced, Extinguiſhed, and Excluded, all Notions and Suppoſitions, that there ever were, in this Nation,* any other Powers, *or* other Eſtates, *than what are before mentioned; or that theſe Three Eſtates, being Repreſentatives, can Repreſent any Power, Being, or Thing, other than, or beſides the* **People** *of* Great Britain.

SECT. VII.

AS to the **Original** Conſtitution, relating to the Hereditary Privilege of every *Britiſh* Subject, *That no Taxes ſhould be* **Impoſed**, nor Money, or other Charge, ſhall be Charged, or Levied upon the People, nor any Part of their Property or Eſtates, taken from them, although it ſhould be for the neceſſary Service,

or

or Support of the State and Government, or for Defence of the Nation; but ſuch Money only, as the Commons have Given, and the Lords Conſented to, when they were in Parliament Aſſembled.

Cuſtom, and Conſtant Uſage, hath alſo proved the Manner and *Form*, in which this Part of the Conſtitution, hath been always Practiſed; for all the **Taxes**, that were ever Impoſed, and all the Monies, that were ever Levied, on the People, to Maintain the State and Government, or to Defend the Kingdom, were Given by the Commons, and Conſented to, by the Lords, in Parliament Aſſembled.

And no Man can ſhew any Memorials, or Proof, to the Contrary, except ſome Wretched Attempts, where the Powers to Impoſe Taxes, were Queſtioned; and thoſe Queſtions, were Attended with Events, Calamitous and Miſerable, as will evidently Appear, in the ſucceeding Chapters; where the Breaches of this Part of the Conſtitution, and the Repairs of thoſe Breaches, are Repreſented.

SECT. VIII.

AS to the **Original** Conſtitution, touching the POWER to Limit, and Direct, and Guide, the *Succeſſion* to this Monarchy, or Government; The many Inſtances of the Exerciſe of that Power, which will Appear in the ſubſequent Chapters, will ſufficiently prove the Exiſtence, and Legality, of that *Power*, and of that Part of the Conſtitution.

As to the **Original** Conſtitution, touching the Creation of the Lords, or Peers, and their *Summons* to Parliament; and concerning the *Election* of the Commons, to Compoſe the Two Eſtates of Lords and Commons, to be Aſſembled in Parliament; And relating to the **Truſt**, Repoſed in the Regal Eſtate, or ſupreme Governor, to Aſſemble, and hold Parliaments **frequently**, to Conſult and Adviſe about the State and Defence of the Kingdom, as a **Debt** due, in Juſtice, to the Nation in General, and to the Regal Dignity in Particular:

Cuſtom, and conſtant Uſage, hath proved, That theſe Two Eſtates are Original, Fundamental, and Eſſential, Parts of this Conſtitution and Government; and have had an Exiſtence in

that *Form*, beyond the Time of Memory, and beyond the Time, that any Thing, or Evidence, can be ſhewed to the Contrary: And, for the better Underſtanding this Uſage, it muſt be Remembered, That the uſual Word Parliament, is, in all the Old Records, Rendered in *Latin*, *Commune Regni Concilium*, as is before mentioned.

And as to the Truſt Repoſed in a Kingly Office, to Aſſemble and Hold Parliaments frequently, for the Benefit, as well of the ſupreme Governor himſelf, as of his People; the Beſt Evidence that any Man can give, in any Cauſe, is that Evidence, which proceeds, or comes out of the Mouths of his Adverſaries Witneſſes; And for this Purpoſe, the Evidence which a Celebrated Writer, and a great Advocate for King *Charles* I. (*Hammond L' Eſtrange*, Eſquire,) hath given, is Strong, and Convincing; for this Writer, from his judicious View, of the *Pourtraiture* of that King, in his *Altitudes*, when he Exerciſed his Government, without Holding or Agreeing with Parliaments, hath Tranſmitted theſe Strong and Pathetick Expreſſions, Page 9. *That a King of* England, *without his ſupreme Council*, (meaning his Parliament) *is like a Man without a Wife*, a Half-formed, or Steril Thing; *for if any Iſſues proceed from a Man, without a Wife, they are Spurious, and Illegitimate; ſo if any Acts of Power, Reſembling Laws, proceed from the King alone, without his Parliament, they are, in like Manner, Half-ſhaped, Reptitious, and Illegal.*

No one can ſhew, any Authentick Memorial, or Proof, that there ever was a Time of Government, in this Nation, wherein there were, either no ſuch Parliaments, or that the Lords were Created, or Summoned to Parliament, or the Commons Elected, in any Form, or Manner other than as above is Aſſerted; or that any of the Kings of this Nation, were ever, either Rich, or Honourable, or Victorious, without Aſſembling, Holding, and Agreeing with their Parliament.

SECT.

SECT. IX.

As to the Original Conſtitutions, Giving the ſeveral Rights and Powers to the Two Eſtates of Lords and Commons, to **Diſturb** and Purſue, and Suppreſs the Miniſters of **Arbitrary** Power, as Common Enemies and Oppreſſors, and to Declare the *Original Contract* to be Broken, when it is Actually and Wilfully Broken, and that the *Throne* did thereby become *Vacant*, and to *Reinſtitute* the Regal Eſtate, by Calling to the Government, ſome other Meritorious Prince, of the Royal Family, and ſo to fill the Throne, and ſupply the Defect of Government:

Cuſtom and conſtant Uſage hath alſo proved, theſe Parts to be Fundamental and Eſſential Parts of this Conſtitution; for **as often** as the *Original* Conſtitutions, and *Forms* of this Government have been laid aſide and broken, and **Arbitrary** or Legiſlative Powers, have been *Aſſumed* and Exerciſed, and the *Rights* of the Two Eſtates of Lords and Commons *Invaded*; and as often as the *Throne* hath, for thoſe Reaſons, become *Vacant*; **ſo often** the People, compoſed of the Two Eſtates of Lords and Commons, in that Caſe of *Neceſſity*, and when all other Means failed, have, in Defence of their Hereditary Privileges, or Parts and Rights in the Conſtitution, conſtantly **Diſturbed**, and Purſued, and Suppreſſed the Miniſters of ſuch **Arbitrary** Meaſures, and have Aſſerted the Original Form of the Government, and have Exerciſed their Right and Power, of **Declaring** the Original Contract to be Broken, and the *Throne* to be thereby *Vacant*, and have **Reinſtituted** the Regal Eſtate, by *Supplying the Vacancy* and Defect of Government, in Calling to the Government, ſome *Meritorious* Prince of the Royal Family; as will evidently Appear, by Numerous Inſtances, when the **Breaches** of the *Original Contract*, and the Repairs of it, come to be Treated of, and Exhibited in the Subſequent Chapters of this Undertaking, *Inſomuch* that the conſtant Uſage, of theſe Parts of the Conſtitution, *proves* them to be **Part** of the Common Law of *England*, as fully and clearly, as any other *Parts* of that Common Law can be *proved*; for Common Law can be no other than *Common Uſage* and Cuſtom, in the Exerciſe of the ſeveral Parts, which Conſtitute this State and Government; which ſeveral **Parts**, Commenced at firſt, by Contract,

or

or by Acts of Parliament, although the Records thereof, cannot now be Reſorted to, or Produced.

NATURE alſo Enforces this Part of the Evidence; for if **Arbitrary** Power in any Perſon or Perſons (except in the Three Eſtates jointly) be Deſtructive to the Conſtitution; and if the *Conſtitution* cannot be Preſerved, without *Diſturbance* of ſuch an **Arbitrary** Power, as otherwiſe would Deſtroy it; then *Neceſſity*, and the Natural Principle of Self-Preſervation, when all other Means fail, makes ſuch *Diſturbance* neceſſary, and therefore Lawful.

And no Man can ſhew any Authentic **Memorial**, That there ever was a Time, when the Legal and Fundamental Form of Government, Founded on the Original Conſtitution, was Departed from and Broken, and *Arbitrary Power* Aſſumed and Exerciſed, without being Diſturbed, and, at laſt, Removed.

And this Part of the Conſtitution Stands Proved, by Two Commendable Inſtances, in the Practice of the **Prieſthood**, the Sons of *Aaron*.

I. The Firſt Example was made by the Prieſts of *Libnah*, upon this Occaſion; *Jehoram*, King of *Judah*, the Sixth Deſcendant from *David*, Degenerated from the True Religion, and, by his Compulſive Authority, *Forced* his Subjects to comply with his New **Idolatry**; by which Means, the Rights, and Inheritances of the Prieſts, were *Invaded* and Subverted: The City *Libnah* therefore, being a City or Town of the *Levites*, within *Judah*, and near the Confines of *Benjamin*, Apprehending it, to be more Juſtifiable, to Reſiſt Actively, than Suffer **Paſſively**, ſuch a Deprivation of their Rights and Inheritance, which was Unwarrantable; they Did, for that Reaſon, **Revolt**, caſting off all Subjection to *Jehoram*, and Made, and Conſtituted themſelves, a Free State; and never after would, or did, Return under Subjection to that Crown; although, after that Time, the Crown Deſcended to Fourteeen Succeſſors of the Lineage of *David*; ſome of whom were Sincere *Worſhippers* of the True God: Which Freedom of *Libnah* Encreaſed, and Armed the Inhabitants, and Acquired to it, the Name of a *Great City*; for, as an Evidence of its Fame and Power, we read, That near 200 Years after, the Mighty *Sennacherib*, King of *Aſſyria*, with an Army of 200,000 Men, thought it more

more Adviſable to clear his Way, to the Siege of *Jeruſalem*, by Firſt making War upon *Libnah*, than to leave behind him ſuch a *Power Unremoved*.

The Conjecture therefore is probable, That this **Revolt** of *Libnah*, was by the *Jews* ſo well Approved and Commended, That *Jehoram*, and his Succeſſors, Kings of *Judah*, thought it a more Tolerable Loſs, to let one Town go, than to put *Weapons* into their other Subjects Hands, who were more likely, to Follow and *Imitate* the Revolt of *Libnah*, than to Puniſh it; for ſuch is the Caſe of **Arbitrary** Princes, who, thinking it a Greater Happineſs, to be Feared than Loved, are fain themſelves to ſtand in Fear of thoſe, by whoſe means they might have been Dreadful unto others.

II. The other Example was of *Uzziah*, King of *Judah*, the 10th Deſcendant from *David*; who, being grown Rich and Potent, and being, by his Minions *Flattered*, That his Authority was Supreme, *Sovereign*, and *Irreſiſtible*; he Aſſumed **Arbitrary** Power, and Invaded the Rights of the Prieſthood, by going into the Temple to burn Incenſe on the Altar; but *Azariah*, the Chief, and 80 other Valiant Prieſts, Aſſembled, and not Standing by, with a **Paſſive** Indifference, nor leaving the Matter to be Accounted for, in the next World, they Reſolved to *Defend* their Rights, and went in after King *Uzziah*, and, in a Coercive Manner, withſtood the King, Objecting, That it was not His, but Their *Right* to burn Incenſe upon the Altar, and therefore peremptorily Required him, to go out of the Sanctuary; and, upon the King's being Wroth, that is, Contending with them, they Thruſt him, **by Force**, from the Altar, and out of the Sanctuary, though he was Anointed.

From this Inſtance, it may be Argued, That if the *Jewiſh* Prieſts, when their Rights were *Invaded*, might withſtand **Arbitrary** Power; ſo the *Iſraelitiſh* Laity, after they, by Rejecting *Rehoboam*, had Recover'd their Antient Rights, and had made a *New Contract* with *Jeroboam*; might (for the ſame Reaſon) in *Defence* of their Lay Rights, withſtand **Arbitrary** *Invaſions*; for he that ſaid, *The Stranger who Invades the Prieſts Office, ſhall be put to Death*, ſaid alſo, *I have given you the Land for an Inheritance.*

The *Principle* of Nature is Unqueſtionably true, *viz.* That where Liberty or Property is Illegally *Invaded*, *or like* to be

Invaded; nothing will keep the People within Bounds, if ever they find themſelves, in a Condition to make *Oppoſition*: For, by ſuch Wrongs, all Tyes, by any Engagements, whatſoever, Fortefcue. are cancelled, and cut Aſunder; *Pro Libertate Natura ſemper Implorat humana, Quia ab homine & pro Vitio, Introducta fuit Servitudo; ſed Libertas, a Deo hominis eſt indita Naturæ, Quare ipſa, ab homine Sublata, ſemper redire gliſcit, ut facit omne, Quod Libertate Naturali privatur, Quò Ipſe Improbus & Crudelis Judicandus eſt, Qui Libertati non favet.* To which may be Added, *That Liberty is the Mother of Courage, and the Nurſe of Induſtry; and ought never to be Divorced.*

But this Article of the Conſtitution, Authorizing the Lords and Commons to **Diſturb**, Purſue, and Suppreſs, as Enemies, the Miniſters of **Arbitrary** Power, Stands proved by the Statute of 1 *E.* III. *Cap.* 1. *Anno Domini* 1327. In which Statute it is Recited, *That the Two* Spencers, *Father and Son,* Robert Baldock, *and* Edmund *Earl of* Arundel, *had Uſurped to themſelves the Royal Power, ſo that the King Nothing did, nor would do, but as they did Counſel him, were it never ſo Great Wrong*: *That when the Queen and the Prince were, by the King's Authority,* in France, *Treating of Peace between the Two Kingdoms, theſe Four Miniſters Incenſed the King againſt the Queen and Prince, and procured much Grievance to them; inſomuch as they Remained beyond the Seas, as forſaken of the King, and Exiled from* England; *wherefore it was Neceſſary, for the Queen and Prince, being in ſo great Jeopardy, in a ſtrange Country, and ſeeing the Oppreſſions of all Sorts of People in* England, *by thoſe Miniſters Accroaching the Royal Power, which the Queen and Prince could not Remedy; unleſs they came with an Army of Men of War; and that with ſuch Armed Forces, and with the Help of the Lords and Commons of* England, *they had Vanquiſhed and* Deſtroyed *thoſe Miniſters*: And therefore it was, by this Act Declared, *That All ſuch of the Lords and Commons, as had ſo Aſſiſted the Queen and Prince, ſhould ſtand Juſtified, and ſhould never be Moleſted or Grieved in their Perſons or Eſtates.*

And this Article of the Conſtitution, is further proved by the Statute of 11 *R.* II. *cap.* 1. *Anno Dom.* 1387: In which Statute, the very Caſe in Point, is Stated in this Manner, **Whereas** *Robert d'Vere, Earl of* Oxford, *Marquis of* Dublin, *and Duke of* Ireland, Treſilian, *and Three other Miniſters of Arbitrary Power,*

Power, ſeeing themſelves likely to be Diſturbed *and* Puniſhed, *by the Lords Commiſſioners Appointed for that Purpoſe, by an Act of Parliament paſſed in the Laſt Year; They* **Conſpired** *many Treaſons againſt the King, and many* **Evils** *againſt thoſe Commiſſioners, and againſt all the Lords and Commons, who had Voted for paſſing that Act of Parliament: Whereupon* Thomas Plantagenet, *commonly called,* Thomas *of* Woodſtock, *Duke of* Glouceſter, *the King's Uncle, and the Earls of* Arundel *and* Warwick, *did* Aſſemble, *in a forcible Manner, to* Defend *themſelves, and to Shew, and Declare, thoſe Evils, and to Provide a Remedy; And for that End, did come into the King's Preſence, Complaining to him, and* Affirming *before him, an* Accuſation, *or an Appeal, againſt thoſe Five* **Arbitrary** (but Favourite) *Miniſters, for* **High Treaſon,** *upon which Appeal, the King Adjourned the Parties to this preſent Parliament, and undertook for the Appellants ſafe* Protection, *in the mean Time; but that afterwards, thoſe Five* **Arbitrary** (but Favourite) *Miniſters, did, in Rebellion, and againſt the Royal Protection, Aſſemble a great* **Power,** *to have Deſtroyed the ſaid Duke and Earls Appellants, and to Accompliſh their* **Arbitrary** *Purpoſes.* **Whereupon,** *the ſaid Duke of* Glouceſter, Henry *Earl of* Derby (*afterwards King* Henry IV.) *and the ſaid Earls of* Arundel, *and* Warwick, *and* Thomas *Earl* Marſhal, **ſeeing** *the open Deſtruction of the King and Kingdom, if the ſaid Five* **Arbitrary** (but Favourite) *Miniſters, and their Adherents, were not* **Diſturbed,** *which could not otherwiſe be done, but* with a Strong Hand: *Therefore, for the Safety of the King, and his Realm, the Duke, and thoſe Lords, and their Adherents,* Aſſembled *themſelves forcibly* (meaning at *Haringay-Park,* after mentioned) *and Rode, and* Purſued, *till they had* **Diſturbed** *the ſaid* **Power,** *ſo Gathered by the ſaid Five* **Arbitrary** *Miniſters* (meaning at *Radcot-Bridge,* after mentioned). It was, therefore, *by this Act of Parliament,* Declared and Enacted, *That all Things that were* ſo done, *by the ſaid Duke of* Glouceſter, *and the Four Earls of* Derby, Arundel, Warwick, *and the* Marſhal, *and their Adherents,* were done, *and were Approved, and Affirmed, by Authority of Parliament,* as done *to the Honour of God, and the Salvation of the Realm.*

And this Act of Parliament, Stands **Eſtabliſhed** by the Statute of 1 *H.* IV. *cap.* 3.; As a Statute made for the **Great Honour, and Common Profit of this Realm.**

This

This Article of the Conſtitution, Stands, therefore, by the Evidences aforeſaid, *well proved*; And it is Incumbent on him, who will Deny, or Controvert, theſe Evidences, to Remove out of his Way, not only all the other Proofs, *but the Authority* of theſe Three Acts of Parliament, of 1 *E.* III. *cap.* 1. 11 *R.* II. *cap.* 1. and 1 *H.* IV. *cap.* 3.

SECT. X.

ANOTHER Proof of this Article of the Conſtitution, Appears from the *ſolemn Judgment* of the ſupreme Judicature in Parliament, againſt Doctor *Sacheverell*, who was *Impeached* by the Commons of *Great Britain*, for Denying, or Condemning it as Unlawful.

The Queſtion was, *Whether the Means uſed by Armed Forces, to* **Diſturb**, *and Remove, the* **Arbitrary** *Government of King* James II. *were Lawful, or Not?*

The Facts upon which this *Impeachment* was Grounded, were theſe, *The Prince of* Orange, *with a great Fleet, conſiſting of* 50 *Men of War, and many Tranſport Ships, Landed* 12,000 *Armed Forces, on the* 5*th of* November, 1688, *at* Torbay, *in* Devonſhire, *to whom, great Numbers of the* Engliſh *Joined, and Marched up to* London, *without Oppoſition, by Reaſon a great Part of King* James's *Army, Deſerted, and Went over to the Prince; whereupon King* James *Fled, and Withdrew into* France, *and the Revolt became General.*

Doctor *Sacheverell* Preached at St. *Paul's* Church, before the Lord Mayor, and Aldermen of *London*, on the 5th of *November*, 1709. and Aſſerted, *That the Grand Security of the Government, and the very* **Pillar** *on which it Stands, was founded on the* Steady Belief *of the Subjects Obligation to an Abſolute, and* **Unconditional**, *Obedience to the* ſupreme Power, *and the utter Illegality of* **Reſiſtance**, *upon any Pretence whatſoever; And that the Adverſaries to his Doctrine of Abſolute and* Unconditional *Obedience, whom he Treats with the Aſperſions of* New Politicians, *Defended themſelves, by Urging the* Revolution *of this Day* (meaning the 5th of *November*, 1688) But the Doctor

Doctor Asserted, *That those Men were the greatest* Enemies *to the Revolution, and to the late King* William, *who endeavoured to cast such* **Black, and Odious,** *Colours upon Both*; for he Asserted, *That King* William *himself, had, in his Declaration, solemnly Disclaimed the least Imputation of* Resistance.

The House of Commons Impeached the Doctor for a High Crime and Misdemeanor, for that he had, in his Sermon, Suggested and Maintained, *That the* **Necessary Means** *used to bring about the Revolution in* 1688, *were* **Odious,** *and Unjustifiable*; *That his late Majesty King* William, *had, in his Declaration, disclaimed the least Imputation of* Resistance, *and that, to Impute* **Resistance** *to the said Revolution, was to cast* **Black** *and* **Odious** *Colours upon his late Majesty, and on the said* Revolution.

The Defence which the Doctor's Counsel made, consisted of Artificial Arguments.

I. *That Obedience to Governors, was a Christian Duty, which the Church, and the Law, Required Ministers to Press and Inculcate on the People.*

They Admitted the *Legality* of the Resistance at the Revolution, to be an **Excepted** Case out of the General Doctrine of *Non-Resistance*, and ought therefore, by a favourable Exposition, to be an *Imply'd Exception*, out of the Doctor's General Assertion, who was to Teach the General **Rule** of Obedience, without pointing out *Exceptions*, after the Example of the Apostles *Peter* and *Paul*, who pointed out none.

II. *That the* supreme Power, *is the Legislative* **Power** *of the King, and of the Two Houses of Parliament*; *and that therefore the Doctor meant, that* supreme Power, *and not any* Power *in actual Being, at the* Revolution.

III. *That the Doctor's Meaning, might be Expounded to be, That the* Time *of the Revolution, was the Day, when the* **Convention** *Voted the Abdication and Vacancy of the Throne*; *and that there was no* Resistance, *at that Time, nor none was Necessary, for all was Quiet.*

IV. *That the Doctor meant, There was no* **Reſiſtance**, *tending to Murder, or to Conqueſt, nor any* Reſiſtance *parallel to the* Reſiſtance *in* 1642; *and that, if there were any ſuch* Reſiſtance, *it was Black and Odious.*

Upon the Whole, That Mens Words, when they are capable of Two Meanings, ought to be Expounded *In mitiori Senſu.*

In Anſwer to theſe Evaſions, it was Argued;

That the Doctor was not Impeached, for Preaching the General Doctrine of *Non-Reſiſtance*; for, doubtleſs, *Obedience to Governors*, is a Chriſtian Duty; but then this Duty ought to be paid, not only to the King, as ſupreme Governor, but to Inferior Magiſtrates.

That the more Zealouſly and Frequently Miniſters preſs this *Duty*, as a Chriſtian Duty, the better they perform their *own*; but if Miniſters, will Deviate from the Religious Quality of the Doctrine, and will turn *Stateſmen*, and handle it *Caſuiſtically*, as a Point of Government, and will pretend to ſhew, how far it ought to Extend, it then behoves them, to take Care, that they be *Right*, and not to hurt this Conſtitution, or to teach ſuch Poſitions, as will **Enſlave** their Fellow Subjects.

That as to the Extent of the Doctrine, every one of the Doctor's own Council had Admitted, that the *Reſiſtance* at the Revolution, was an *Excepted Caſe* out of the General Doctrine of *Non-Reſiſtance*; therefore, as to the Doctor's Defence, That there was *no Reſiſtance* at the Revolution, ſuppoſing the Revolution Commenced on the Day when the Abdication or Vacancy of the Throne was Voted; It was Argued, That the Doctor had himſelf, *fixed* the Commencement of the Revolution, to be on the 5th of *November*, 1688, when *William*, Prince of *Orange*, Landed at the Head of 12000 Armed Forces; and therefore, to Expound his Words, to mean the *Time* of the Vote, was a Dividing between the *Cauſe and the Effect*; or between the *Commencement* and the End; or between the *Root* and the *Tree*; for the **Reſiſtance**, with thoſe Armed Forces, was the *Cauſa Efficiens*, and the Abdication was the *Cauſa ſine qua non*, that finiſhed the Revolution; for without that *Reſiſtance*,

ance, no Man could, with any Senſe, preſume, That the Convention could have Met, or Sate, or Debated, or Reſolved, *&c.* to Compleat, by their Vote, that Revolution; and, therefore, the *Reſiſtance*, and the *Revolution*, were but one Continued Act.

It was Argued, That the *Rule* of Expoſition of Words, was, That if there be one *Senſe*, which Appears *plainly* Criminal, without Straining the Words, that *Senſe* ought to be taken; unleſs the Adverſe Party can ſhew *another Senſe*, Appearing as *plainly*, from the Words, to be Innocent, as the Criminal Senſe is *plain*; that, in ſuch a Caſe, the Words ſhall be Expounded, *in mitiori Senſu*; but when the *Senſe is plainly* Criminal, it is not ſufficient to Compreſs, and Squeeze, or Diminiſh the *Senſe*, to make the Words Innocent; for that would be to take the Words in *Mitiori Nonſenſu*.

It was therefore from this *Rule*, Argued, That the *plain Senſe* of the Doctor's Words, which was Criminal, is this, That if there were *Reſiſtance* at the Revolution, that *Reſiſtance was Black and Odious*; and that this Aſſertion is as *plain* and Direct, as if he had Aſſerted, That there was *Reſiſtance* at the Revolution; and that That Reſiſtance was *Black* and *Odious*.

So, if I ſay, That *if* Dr. *Sacheverell*'s Coat be *Black*, he is an *Incendiary*; This is as Direct, as if I ſay the Doctor is an *Incendiary*; for every one ſees his Coat is *Black*.

So, if I ſay, That *if* the Doctor had Counſel at his Tryal, he made a very *Ill Defence*; This is as Direct, as if I ſay, He made a very *Ill Defence*; for every one knows, he had Counſel.

It was therefore Argued, That the Doctor's Affirming; and Calling God, the Searcher of Hearts, to Witneſs, That he had *no Intention*, to Aſperſe the Memory of his late Majeſty, King *William*, or to Traduce, or *Condemn* the late Revolution; was *Proteſtatio contra Factum*, and therefore was the more Daring and Dangerous.

As to the *Senſe*, Endeavoured to be put on the Doctor's Words, That he meant *Reſiſtance*, tending to Murder; or *Reſiſtance*, tending to Conqueſt; It was Argued, that That was a Re-

a Remote *Senſe*, and not Warranted; for *Reſiſtance is Reſiſtance*; and the Doctor's *Rule* is General; and he endeavours to Include in it, the *Reſiſtance* at the Revolution, and to prevent its being Underſtood, as an *Exception*; and by that General Rule, without any Exception, he Condemns that *Reſiſtance*; for if there were any Sort of *Reſiſtance*, it was (according to him) Illegal, and therefore the Doctor Aſſerted, That the *Reſiſtance*, which was the neceſſary **Means**, to bring about the Revolution, was **Black and Odious**, and all the Conſequences of it Wrongful.

The LORDS, thereupon, Reſolved, and Gave Judgment, *That Doctor* Sacheverell *was Guilty of the High Crimes and Miſdemeanors, for which the* COMMONS *had Impeached him.*

This Judgment is a Reſolution of the Supreme **Judicature** of the Kingdom, in the very Point in Queſtion, *viz.* That the Lords and Commons have a Right, by the Conſtitution, to **Diſturb**, and Remove the Miniſters of **Arbitrary** Power. And notwithſtanding what Afterwards happened to this Great **Offender**, and to the Nation; This Judgment will ſtand as an Indelible **Monument**, to prove this particular Part of the *Britannic Conſtitution.*

SECT. XI.

As to the Proof of that Part of the Conſtitution, which *Reſerves* to the Two Eſtates, whenever a Vacancy of the Throne, or a Total *Ceſſion* of Government, ſhall happen, a **Power** to provide proper Remedies to prevent publick Inconveniencies;

This Caſe happened on the 11th Day of *December*, 1688; when King *James* II. Actually Abdicated the Government, and Withdrew himſelf out of the Kingdom; which *Ceſſion* continued the Space of Sixty-three Days, until the 13th Day of *February*, 1688, when the Two Eſtates of Lords and Commons, **Declared** *William* and *Mary*, Prince and Princeſs of *Orange*, to be King and Queen of *England*, &c. During which Sixty-three Days of the Vacancy, or Ceſſion of Govern-

Government, there happened many Felonies, and Criminal Offences to be Committed; and therefore Queſtions of Law did Ariſe, How Indictments and Proſecutions, againſt ſuch Offenders, ſhould be framed? and againſt what Peace or Government, thoſe Crimes ſhould be Alledged to be Committed, in Regard the Nation was, in ſome Sort, **Void** of Government? But, to ſupply that Defect, the Act of Parliament of 1 *Will. & Mariæ*, cap. 4. was made; whereby it was **Enacted**, *That ſuch Offences ſhould be Alledged, in all Indictments, to be committed* **Contra Pacem Regni**: Inſtead of *Contra Pacem Domini Regis Coronam & Dignitatem ſuas.*

This Authority is ſufficient to **prove**, That there may be a *Vacancy*, or Ceſſion of Government; and that *Neceſſity*, in ſuch Caſes, Requires Proviſion to be made, againſt *Inconveniencies*, and eſpecially for *Re-inſtituting* the Regal or Monarchical Eſtate.

SECT. XII.

As to that part of the Conſtitution, which makes *Standing Forces* in Times of Peace, and eſpecially Foreign Forces, inconſiſtent with this Form of Government, and hath Ordained, That, *Disbanding* of Land Forces, when Peace is Settled, ſhall be Deemed a *Matter of Juſtice* due to the Nation;

The Evidence of this Article, can ariſe only from Experience, and from Inſtances of Danger, which the Raiſing of Armies againſt this Conſtitution, have Furniſhed: Thoſe Inſtances will Appear in the Subſequent Chapters, in which are Exhibited the Breaches and Repairs before mentioned; But a Short Repertory of them, in this Place, will prove the Aſſumption.

When the Lords and Commons had vindicated the Conſtitution, in the Year 1215, and had brought King *John*, to Aſcertain their Liberties, by a Charter in Writing, and by a Contract upon Oath to obſerve it; this King *Repented* of the Right, and Juſtice he had done; and, in order to Reverſe it, he procured an **Army** of Foreigners; with which he made War upon his own People, the Lords and Commons, and became Superior in the Field; and brought the Lords and Commons into ſuch **Diſtreſs**, that no *Means* were left, to Defend the Conſtitution, but to *Invite* the Dau-

phin of *France*, to come with an Army to Deliver them: Offering him a Conſideration Equivalent to the Adventure; The Dauphin came with *French* Forces, and Raiſed this People to a Superiority in Arms: But that *Remedy* brought with it, as much Danger, as it came to Remove.

A ſmall Standing **Army** of Diſciplin'd Troops, under the Command of Sir *Andrew Harclay*, kept at *Carliſle* to ſecure the Borders againſt the *Scots*, was brought by the **Two Spencers**; in the Reign of King *Edward* II. to *Burrough-Brigg*, where they Encountred and **Routed** thoſe Barons, who Aſſerted the Conſtitution; and Enabled the **Arbitrary** *Spencers*, to Glut themſelves, with the **Carnage** of the Patriot Barons.

An Army Raiſed by King *Richard* II. in *Cheſhire* and *North-Wales*, and kept Standing, Enabled this King, and his Favourites, to **Awe** the Parliament, and to procure from them, an Act, whereby they Delegated over to him, the Legiſlative Authority, and made him, in Effect, Abſolute.

The Army Raiſed by the Parliament in 1642, having continued about Five Years in War and Bloodſhed, became Senſible of their **own Power**, and Aſſumed to be Governors, and, with the Greateſt Eaſe, Turned their Maſters out of Doors, made their Captain a Prince, and ſupported him in the Exerciſe of a Power that was eminently **Arbitrary**.

And, Laſtly, the **Army** which King *James* the Second, continued Standing, and Encamped on *Hounſlow-Heath*, bound down the People, with Tormenting Fears of Slavery, and convey'd into the Minds of the King, and the Popiſh Prieſts, the moſt **Arbitrary** and Daring Enterprizes.

Theſe Five Examples, of Standing Forces, may (it's preſumed) Induce a Belief, that this Article, is not only true, but was neceſſary, to be provided, and fixed in the *Conſtitution*.

SECT. XIII.

AS to that part of the Conſtitution, which Inſtitutes the Forms of *Original Writs*, to be the Foundation of all Demands and Suits for Juſtice, and eſpecially Writs of *Summons* to call Par-

Parliaments, and to Direct the People, to make Elections of Repreſentatives, to ſerve them in Parliament;

The Evidence of this Part of the Conſtitution, in Regard to common *Original Writs*, is found in the Law Book, called, The Regiſter of *Original* Writs: In which, thoſe Writs were at Firſt Written and Recorded, and afterwards Printed, when the Art of Printing was Invented and Practiſed.

This Book is the oldeſt Memorial, of thoſe Matters, that is now Extant, and was, doubtleſs, Printed from the moſt Antient Manuſcript; for there is not, nor ever was, in this Kingdom, any Authentick Memorial, or Record, that ſhewed any Proceedings, or Means to Proceed, in determining Rights, or in Demands, or Suits for *Juſtice*, Prior to thoſe Original Writs; which makes the Deduction Clear and Strong, that before the Inſtitution of thoſe Original Writs, there was not any Form of Government, or Adminiſtration of *Juſtice*, in *Britain*.

The Argument may be thus Framed, **Inſecurity** and Want of Juſtice, or Protection from Wrongs, was the Firſt Cauſe, that moved *Britons* to Aſſemble and Conſult, how to *Form* this Conſtitution and Government, and to Erect a Power, to protect themſelves, by having a Diſtribution of Juſtice —— That there muſt be Laws firſt Made, before it can be Known what is Juſt or Unjuſt, Right or Wrong —— That when the Power to Adminiſter Juſtice, was Formed, the next Formation muſt neceſſarily be of the *Means*, how to Commence and Begin the Proceeding, in order to obtain Juſtice. Thoſe *Means* Appear to be, by the *Original Writs*, or Written Letters, before mentioned; one of which Writs is found, to be an *Original Writ*, for the Members of the Houſe of Commons, to Recover their Wages: And No-body doubts, but theſe Original Writs, in General, are the Foundations on which the whole Law depends.

Therefore, if the **Firſt Motion** of the Government, after its Birth, and of the Laws, was to Adminiſter Juſtice; and if the *Firſt Step*, to begin that Proceeding, in order to obtain Juſtice, was to ſue out an *Original Writ*, or Written Letter; then theſe Original Writs to obtain Juſtice, were Coeval, and Coordinate, with the Inſtitution of the Government, and did Commence in the Reign of the Firſt King; And if ſo, then the Inſtitution

tution of the **Third Eſtate**, or Houſe of Commons, was Coeval with the Inſtitution of the other Eſtates, and is Part of the primary Origination of the Government, becauſe the *Original Writ* for the Members of the Houſe of Commons to recover their Wages, and running in the King's Name (*i. e.* the firſt King's Name) is as *Antient*, as any of the other Original Writs: This Evidence therefore, of the Conſtitution, ſeems to be Concluſive.

The Evidence, as to the *Original Form* of the Writs of **Summons** to call Parliaments, Appears from all the Parliament Rolls, and Records, which prove not only the Original Inſtitution of *Parliaments*, but the Buſineſs they were to do, when Aſſembled together.

SECT. XIV.

AS to the **Repartition** of Elections, in different Parts of the Nation, and the Excluſion of the Regal Influence, from ſuch Elections; and the Payment of *Wages* by the Electors, to their Elected Repreſentatives;

The Evidence of this Part of the Conſtitution, Appears from Four Inſtances; *viz.*

I. From the Proviſion made, as before is mentioned, of an Original Writ, for the Repreſentatives in Parliament, as a Foundation to Enable them, to Demand and Recover their **Wages**, becauſe this Original Writ, or Remedy, is as Old as the Government: The Writ itſelf, for a Knight of a Shire, to Recover his Wages of 4 s. *per Diem*, to be Levied upon the County, proves alſo, the other Writ for the Wages of the Citizens and Burgeſſes; for the Writ which Commands the Sheriff to Levy the 4 s. *per Diem*, for the Knight of a Shire, upon all the Lands of the County, hath this Exception in it; *Civitatibus & Burgis de quibus Cives & Burgenſes ad Parliamentum noſtrum apud W. die, &c. vener' duntaxat Exceptis*; i. e. Except the Cities and Boroughs, from whence Members come to the Parliament. The Inſtances of theſe Original Writs to Recover the Wages, are Numerous, and the Antiquity of them is well proved, by Mr. *Tyrrel*, in his Appendix to the Hiſtory of King *Richard* II. Pages 60, 61, 62, and 212.

II. From

II. From the Inſtances of ſome of the leſſer Towns, ſuch as *Banbury*, *Bewdley*, and *Abington*, which, by Reaſon of their Inability to pay *Wages* to Two, had the Election but of one Repreſentative, Allotted to each of thoſe Towns.

III. From the Caſes of the Counties, and Cities of *Cheſter*, and *Durham*, who were omitted, and left out of the Original *Repartition* of Elections, and for that Reaſon, ſuffered great Damages and Inconveniencies, for Want of Repreſentatives; and yet the Crown could not Alter the Legiſlature, by Introducing more Members into the Houſe of Commons, or by Granting to thoſe Counties and Cities, the ſuperlative *Privilege* of Electing, and Sending Members to Parliament. And therefore, at laſt, the County of *Cheſter* Petitioned the Parliament, to Grant them the ſame *Privilege*, of Sending Repreſentatives to Parliament, as was Enjoyed by their Fellow Subjects.

And thereupon an Act of Parliament Paſſed in the 34th and 35th Years of King *Henry* VIII's Reign, *Cap.* 13.——Whereby it was Enacted, *That the County of* Cheſter *ſhould Elect, and Send Two Knights, and the City of* Cheſter, *Two Citizens, to Repreſent them in Parliament.* And the like Act of Parliament Paſſed in the 25th Year of King *Charles* II's Reign, *Cap.* 9. To Grant the like *Grand Privilege* to the County, and to the City, of *Durham*: And, moreover, *Wales*, by the ſame *Means*, obtained the ſame *Privilege*, becauſe Repreſentatives could not, by any other Way, be Introduced into Parliament.

Theſe Inſtances, according to the Rule of *Exceptio probat Regulam*, ſubſtantially prove Two Things:

I. That Inaſmuch as the Crown cannot, at this Day, *Grant* to any City or Borough, the Privilege of Electing and Sending Members, to have a Suffrage in the Legiſlature, It is from thence clear, that the Original Privilege of thoſe Cities and Boroughs, that do Elect and Send Members to Parliament, did not *Commence* by Grants from the Crown.

II. That the *Original Form* of the Legiſlature, and Inquiſitive Power, Veſted in the Third, or Democratical Eſtate, or Houſe of Commons, is Unalterable, and **Impaſſible**; and it is Apprehended, That the Inſtitution of the Second, or Ariſto-

cratical Eſtate, or Houſe of Lords, is, or ought to be, at leaſt Sitting the Parliament, in like Manner, *Impaſſible*; for if any Power can, by any *Means*, Bend, and make Flexible, the Power and Eſſential Privileges of that Houſe, the Conſequences are too Nice to be Deſcribed.

IV. The Payment of **Wages**, by the Electors to their Repreſentatives, proves the Intire **Freedom** of the Third Eſtate, or Houſe of Commons; and the Total Excluſion of all Influence, of the intended King, from their Elections, becauſe *Wages*, infer not only a Service, but a Right and Power in the Electors, or Conſtituents, to give *Inſtructions*; and alſo a Duty in the Repreſentatives, to Receive and Obſerve them, becauſe they do, or may, Receive Wages; which Perfectly, and Intirely, Excludes all other Influences.

This Payment of *Wages*, in like Manner, infers an Obligation on the intended King, to Reſide with his Parliament, and to diſpatch, with Expedition, the National Buſineſs, becauſe Abſence, or Delay, would Load the Country with a Burden of Wages, which they would call Unneceſſary; but altho' *Wages* and Service are Correlative, one Implying the other, yet the **Service** is Veſted with a Share in the whole Legiſlative Power, and Attracts ſo many Privileges, relative to Power in *Britain*, that no other Service in the World, is Sollicited, or Contended for, with ſo much Zeal and Expences.

OBJECTION.

BUT Critical Gentlemen have Objected, *That the Democratical, or Third Eſtate, Conſiſting of the Commons, have been called in Records, by different Names; As in King* John's *Charter, they are called,* Tenentes in Capite (*i. e. Tenants in Chief*); *in other Records,* Barones Minores, *and* Nobiles Minores, *i. e. The Leſſer Barons. In King* Henry III's *Charter, or Printed* Magna Charta, *which was made but* 10 *Years after that of his Father King* John's, *they are called,* Milites & Liberi Tenentes (*i. e. Knights and Freeholders*) *and therefore ſome People have Erected great Triumphs upon that Variance in their Appellation, as if no ſuch Third Eſtate was Inſtituted in the Origination of this Government, becauſe their Names were Varied.*

ANSWER.

ANSWER.

BUT that Objection may Receive this plain and eaſy Anſwer, *That the ſubſtantial Matter, or that Third Eſtate, conſiſting of the Commons, is, and always was the ſame, by whatſoever Names or Titles they were dignified or diſtinguiſhed.*

SECT. XV.

AS to the Original Conſtitutions, touching the intended King's Legal Powers and Prerogatives Annexed to this Crown, above Specified, and his Entring, on his Part, into the **Original Contract**;

Cuſtom, and conſtant Uſage, have ſo Eſtabliſhed them, that, it's preſumed, it is needleſs to urge any Evidence to prove them, becauſe no one will go about to Deny them.

It is therefore concluded, That the **Evidence**, proving the *Original* Conſtitution, and all the ſeveral Parts of it, by ſuch *Antient Cuſtom*, and *Conſtant Uſage*, appearing from all the Records of Parliament, and other Memorials, is ſtrong and convincing; and that it muſt be *neceſſarily preſumed*, That inaſmuch as *Conſtant Uſage*, hath been, for ſo many hundred Years, conformable to the Form of Government before preſcribed, without any *Contrary Uſage*; that therefore the Original Conſtitution, was, at firſt, **Formed** and Inſtituted in ſuch Manner as is above Aſſerted.

From hence, the Deduction is Undeniable, That all the *Original* Conſtitutions, tending to ſecure the People's Liberties and Properties, were **Eſſential**, and as evident, as thoſe by which this *Monarchy*, and the Regal Powers, Rights and Prerogatives of the Crown were inſtituted.

In this Place it may be remarked, That if there had been any Records or Memorials, **Diſproving** this Conſtitution, or Form of Government, of *equal* Authority with thoſe that prove it; there's no Doubt, but the Enemies of this happy Government, would have taken as much Care to *preſerve* them, as they did to *deſtroy* thoſe that proved it.

SECT.

SECT. XVI.

IT may be Added, as an Additional Argument, That the ſame Rule of Evidence, (*viz.*) *Antient Cuſtom*, and *Conſtant Uſage*, as is here contended for, is Allowed, in all other Caſes, on the Behalf of the Subject, againſt the Crown; As for Inſtance, If the King ſhould bring a **Quo Warranto**, againſt the Corporation of any of the Colleges in the Univerſities, or againſt the Corporation of any City or Borough, Requiring them to ſhew, by what Warrant or Authority, they claim, to have, and enjoy ſuch or ſuch a Modification, or *Form* of their Body Politick, or this or the other Franchiſes or Privileges; in this Caſe, though the Antient Charters and Grants from the Crown, happen, by Length of Time, or other Caſualties to be *Loſt*, yet ſuch College, City, or Borough, may **plead**, That by Antient Preſcription or Cuſtom, Time out of Mind, uſed and approved, they have had, uſed and enjoyed, the Franchiſes and Liberties ſo Queſtioned; and, in that Caſe, an **Evidence** of Antient and Conſtant Uſage, will be Allowed, even againſt the Crown, that ſuch College, City, or Borough, in the *Original* Commencement thereof, were ſo legally Conſtituted, as hath been, in latter Times, uſed.

So in the Caſe of an Antient College, in either of the Univerſities, where the *Original* Foundation, and the Statutes for the Government of it, have been, by Length of Time, **loſt**; yet the conſtant Uſage in the Form, and Manner of the Government of it, *à poſteriori*, is an Evidence, that the *Original* Statutes, Inſtituting the Form of the Government of the College, were *à priori*, at the firſt Foundation of it, the ſame, as have been ſo in latter Times conſtantly uſed.

If therefore Preſcription or Cuſtom, and Antient Uſage, will Prove and Maintain the Subjects *Leſſer* and more Private Franchiſes, Rights and Privileges, againſt the CROWN, *à multo fortiori*; it ought to be admitted, to Prove and Maintain the *General* and Publick Franchiſes, Rights and Liberties of the *whole* Nation, without which the *private* ones can be of no Value or Signification; *Quod in minori valet, valebit in majori.*

SECT.

SECT. XVII.

IT is obſervable, that TRUTH works in the Minds of Men ſo irreſiſtibly, that it will forcibly flaſh out, and be acknowledged by the moſt Obſtinate Oppoſers; for although the *Truth* of the Conſtitution, conſiſting of the Three Eſtates of the King, Lords, and Commons, and of the Parliamentary Rights, Powers, and Hereditary Privileges of the Two Eſtates of Lords, and Commons, hath been, in ſome Reigns, not only expoſed and treated with Indignity and Contempt, but arraigned as an Ill and Unjuſtifiable **Poſition**; yet Kings themſelves have borne open and publick Teſtimony of the Truth thereof; for, on the 17th of *May*, 8 *E.* IV. the Lord Chancellor, in full Parliament, in the Preſence of King *Edward* IV. (Generally, though Untruly, called, an Hereditary, and not a Parliamentary King) then ſitting on the Throne, and in the Preſence of the Lords and Commons Aſſembled in Parliament, made an Eloquent Oration (Doubtleſs by the King's Direction) Declaring to the whole Nation, then preſent, in their Repreſentatives, *That the Three Eſtates, did Comprehend the Governance of this Land, the Pre-eminence whereof was to the King* (Including the Firſt King) *as Chief*; *the* Second *to the Lords Spiritual and Temporal, and the Third to the Commons*; which was a Declaration, as Solemn, as the Nature of the Thing was Momentous.

And moreover, conformable to this Declaration, the late King *Charles* I. (to whoſe Memory is paid, and ought to be paid, great Veneration) in his Anſwer, given about the latter End of *May*, or the Beginning of *June*, 1642, to the *Nineteen Propoſitions*, which the Parliament laid before his Majeſty, as a **Baſis**, upon which the Government might be Re-eſtabliſhed, and War prevented, was pleaſed to bear a **Teſtimony** (worthy of the beſt of Kings) touching many ſubſtantial *Parts* of this Conſtitution; and ſignified the ſame in Writing, under his own Hand, to the Lords and Commons, then in Parliament Aſſembled; **Which** muſt needs be a convincing and unanſwerable Proof, to all ſuch as retain any competent Reſpect to his Memory or Reputation.

Sanderſon, 533. Husband's Collections, 223.

For, in this Anſwer, his Majeſty was pleaſed **Solemnly** to Aſſert and Declare, *That the* **Antient** *Conſtitution of the Government of this Kingdom, was* equally *happy, well poiſed, and never enough to be commended.*

And his Majeſty was pleaſed to *Illuſtrate* this Poſition, by deſcribing the Three Kinds of Government, **Abſolute Monarchy, Ariſtocracy,** and **Democracy**; and the particular Conveniencies and Inconveniencies of each of them; and Aſſerted, *That the* **Wiſdom** *of our Anceſtors* (meaning the Firſt, and Original *Britiſh* People, whom his Majeſty, as well as the Two Houſes of Lords and Commons, repreſented) *had* FORMED *this Government, out of a Mixture of theſe Three Sorts of Government, with the Conveniencies of all the Three, and without the Inconveniencies of any one, ſo long as the* Ballance *ſhould hang even between the Three*: His Majeſty proceeded, and ſhewed the ill Qualities of each Eſtate, *viz. That the* **Evil** *of Abſolute* Monarchy, *was Tyranny; the* **Evil** *of* Ariſtocracy, *was Faction and Diviſion; and that the* **Evils** *of* Democracy, *were Tumults, Violence, aud Licentiouſneſs.*

That the good **Qualities** of each Eſtate, were theſe, viz. *That the* **Good** *of Monarchy was, The Uniting a Nation under one Head, to reſiſt Invaſions from Abroad, and Inſurrections at Home; the* **Good** *of Ariſtocracy was, The Conjunction of Counſels in the ableſt Perſons of a State, for the publick Benefit; and the* **Good** *of Democracy was,* Liberty, *and the Courage and Induſtry, of the People in general, which* Liberty *produced.*

His Majeſty Affirmed, *That the Laws* (*i. e.* All the Laws that ever were made) *were* jointly made *by the Three Eſtates,* viz. *by the King* (including the Firſt King) *by the Houſe of Peers, and by the Houſe of Commons, choſen by the People, all having free Votes and particular Privileges:* Which inferred the Negative, That no Laws ever were, or could be made, but by them *Jointly.*

The King proceeded, and ſaid, *That certain* **Powers** *were* intruſted *with, and placed in the King* (*i. e.* the Firſt King) *of England*; (to wit) *the* Execution *of the Laws; the* POWER *of Making Treaties, War and Peace; of Making Peers; of chuſing and appointing Officers, and Counſellors of State,* Judges *for Law, Commanders for Forts, Caſtles and Navies, or Ships of War;*

War; giving Commiſſions and Powers, for Raiſing Men, to make War Abroad, and to prevent, or provide againſt Invaſions, or Inſurrections at Home; the Benefit of Confiſcations; the Power of Pardoning; and ſome others of the like Nature.

His Majeſty Aſſerted, *That this Regulated* **Monarchy**, *having the* Power *to preſerve that Authority, without which, it would be Diſabled, to* preſerve *the Laws in their Force, and the Subjects in their Liberties, was intended to draw to the King, ſuch a Reſpect and Relation, from the Great ones, as might hinder the* **Ills** *of Diviſion and Faction, and ſuch a Fear and Reverence, from the common People, as might hinder* Tumults, *Violence, and Licentiouſneſs.*

This King Aſſerted, *That to the End the Prince might not make Uſe of his Powers, to the Hurt of thoſe, for whoſe Good he was* **Intruſted** *with them, nor make Uſe of Publick* Neceſſity, *for the Gain of his Private Favourites or Followers, the* Houſe *of Commons was* ſolely Intruſted, *with the Firſt Propoſitions, concerning the* Raiſing *or Levying of Monies* (the Sinews of Peace and War) *and the* Impeaching *of ſuch Malefactors, as ſhould be found Violating and Undermining thoſe Laws, which the King was Bound to Protect, and for the Protection of which, they* (meaning the Lords and Commons) *were Bound to Adviſe him.*

That the Lords were **Truſted**, *with the laſt Reſort of the Judicial Power, and were, for that Reaſon, an excellent Skreen, or Bank, between the Prince and People, to Aſſiſt each, againſt the Incroachments of the other, and by juſt Judgments, according to the Laws, to* preſerve that Law, *which ought to be the Rule of every one of the Three Eſtates.*

And his Majeſty, in his Anſwer to the Parliament's Declaration of the 19th of *May*, 1642, was pleaſed to Aſſert, *That he himſelf, as King, was*, and therefore the Firſt King was, *an* **eſſential part** *of the Parliament*; And in his Meſſage from *York*, of the 17th of *June*, 1642, the King was pleaſed to ſay, *That it ought to be deemed a* Merit *in him, to Reject ſuch Counſel, as would perſuade him, to make himſelf* **none** *of the Three Eſtates.* And, moreover, Repeated the ſame Thing in his longeſt Declaration, of the 12th of *Auguſt*, 1642. Adding, *That Parliaments are an* **eſſential** *Part of the Conſtitution, and* Clarendon. Vol. I. 598.

and that his Majeſty (including the Firſt King) *and his Two Houſes, made up the* Parliament; *and that this whole Frame and Conſtitution, was admirably Founded by our Anceſtors*; Which proves, That the Two Eſtates, or Houſes of Parliament, are Coeval and Coordinate with this **Monarchy**, becauſe, whatever *Part*, is of the *Eſſence* of the Integral, The ſame is *Equal* to any other *Eſſential* Part of that Integral. His Majeſty's Declarations, *That the Wiſdom of our Anceſtors had* Formed *this Government, to conſiſt of the ſaid Three Eſtates*, are a Concluſive Evidence, that that Formation, was the Original and Firſt Inſtitution of this Government; or elſe it is Incumbent on Gainſayers to ſhew, and prove ſome other Time, when this Government was at Firſt *Formed* and Commenced, and How, and by Whom.

Theſe Evidences, out of the Mouth of a King himſelf, *and ſuch a King*, when he was entering into a War with the Parliament, being ſo Clear and Diſtinct, and ſo often, at Diſtant and Sundry Times, *Repeated*, is the ſtrongeſt Evidence and Proof, that was ever given, or can be given, of this Conſtitution; for they carry in them a Confuſion, not only of all Contradictions, but of all Evaſions, and merit Golden Letters, to make their Monument.

This **Evidence**, therefore, proves this Conſtitution, to be of Human Extraction; for the Royal Witneſs Aſſerts, *That it was by the* Wiſdom *of his own Anceſtors, as well as of the Anceſtors of the Lords and Commons* (i. e. The *Britiſh* People) *Moulded and Framed*; and, conſequently, that ſuch Moulding and Framing of the *Structure*, and eſpecially of the Main and Strongeſt Pillars of that *Structure*, was, at the Firſt, and, at one and the ſame Time, Compleated.

Gainſayers, therefore, muſt be Profane, who Aſſert, That the *Monarchical* Part of theſe Three Eſtates, was of *Divine* Inſtitution, when the other Two, are ſo plainly *Human*; for it was never pretended, That the Two Eſtates of Lords and Commons, who, with the King, Compoſe the Eſſence of the Parliament, and of which, the King is an Eſſential Part, are *Jure Divino*, or of *Divine Inſtitution*.

Here the Royal Confeſſor, or Witneſs, Affirms, *That the* **Powers** *placed in the King* (meaning the Firſt King) *as well as in*

in the other Two Eſtates, are a **Truſt,** *and the King a* Truſtee; *That he, as King, is* **One** *of the Three Eſtates; That the King had but a* Joint Part *of the Legiſlature; That although he has the* Power *of making War and Peace, yet ſuch a War or Peace, would be Defective, unleſs the Commons added Sinews* (i. e. Money) *for the Strength and Support of it.* The Royal Witneſs Alledged, *That the Houſe of Commons had the* Sole Truſt, *or Power, with the Conſent of the Lords, of Impoſing Taxes, both in Peace and War, for the publick Service; and the ſole Power of* Impeaching *ſuch Offenders, as ſhould endeavour to Violate that* Truſt *or* Power, *or any other publick Law;* The Conſequence whereof is, That when the Parliament is Neglected, and not Called, or when Called, is Abruptly Broken and Baffled, and the National Buſineſs Interrupted, either by Prorogations, or Diſſolutions, and the Government Adminiſtred, or *Taxes Impoſed*, or Money Levied, without a Grant thereof in Parliament; Then, in thoſe Caſes, the People's Rights are *Incroached on, Invaded*, and Violated, by that Third Eſtate, which is *Intruſted* with the Protection of the Rights of the other Two.

To theſe *ſolemn* Declarations of King *Charles* I. may be added, the *ſolemn Declarations* of King *Charles* II. in his Legiſlative Capacity; for, by the Statute of 13 *Car.* II. *cap.* 1. §. 2, 3. To which this King gave the Royal Aſſent, it is Declared, *That Both, or Either, Houſes of Parliament, have not, nor hath, a* Legiſlative *Power, without the King*; Which neceſſarily Implies, *Nor the King*, even not the Firſt King, *without the Two Houſes.*

SECT. XVIII.

AFTER theſe Evidences, the Testimony of the Univerſity of *Oxford*, is deemed to be of no ſmall Weight or Authority; for they Printed and Publiſhed the Lord *Clarendon*'s Hiſtory, with a large Preface, of their *own Compoſing* and Authenticating; In which, Pages 4, 5, 6, 7. They bear Witneſs, *That the* **Form** *and Conſtitution of this Government, conſiſts of the Three Eſtates, of King, Lords and Commons, Exploding any* Fourth Eſtate: *And* adding this Commendation, *That it is the Happieſt, and Strongeſt, and moſt Durable, Conſtitution of Government, in the World; for that, although it may be, for a Time, Oppreſſed, or Expelled, yet, being Engraven in the Nature of* Britons, *it will*

Riſe again and Return. Which Aſſertion of the Univerſity, doth neceſſarily mean, That this Form and Conſtitution of Government, was the Firſt and Original Formation, or elſe they will Inform the World, at what other Time, this Conſtitution was at Firſt, Framed and Commenced.

The Preface Proceeds and Aſſerts, *That the Obedience of* Britiſh *People, to their King, is to be Meaſured by that Regard, which is due to, and conſiſtent with, the Conſtitution or Laws of the Land*; which neceſſarily implies a Limitation, and, conſequently, in ſome Caſes, a Ceſſion; and, therefore, that **Poſition** Condemns the Doctrines of **Paſſive Obedience,** without Reſerve, and unlimitted **Non Reſiſtance:** And accordingly, that Preface Aſſerts, *That although the Univerſity would not be thought, to juſtify the Riſing up in Arms of Subjects, to do themſelves Right, in Controverſies between them, and the King, yet they think, That from the Truth of that Nobleman's Hiſtory, all Princes may See, and Judge, that they can never acquire to themſelves, any Advantage from being in an Intereſt* **contrary** *to That of their People, nor from giving their Subjects unreaſonable Provocations*; *for,* ſays the Preface, *when the Laws of the Land are Broken, and the Subjects juſt Rights and Privileges* Invaded, *and Oppreſſed, the People, when all other* **Means** *fail, are not to be* Reſtrained, *from Attempting by* **Force,** *to do themſelves Juſtice*: And it is, in that Preface, further Aſſerted, *That whoſoever may have a Thought, of Ruling* Great Britain, *may be convinced, in his own Judgment, that his Government will be* **Diſturbed** *and Unquiet, unleſs all reaſonable Men be ſatisfied, that he hath a fixed Principle and Reſolution, inviolably to preſerve this Conſtitution*: *And moreover, that when a King of* Britain, *by Ill Judgment, or Ill Fortune, of his own, or thoſe Intruſted by him, happens to Fall, or be Engaged, in an Intereſt* CONTRARY *to that of his People, and will* **purſue that Miſtake,** *that Prince muſt have Terrible Diſturbances, and Conflicts, in the Courſe of his Reign, which Way ſoever the Controverſy ends.*

Theſe true *Britiſh Aſſertions,* of that Learned and Venerable Body, are extenſive *enough,* and, it is hoped, ſtrong *enough,* to prove this Conſtitution, in all the Parts of it, to be **ſuch,** as in this Undertaking is Aſſerted: And it is preſumed, That the Knowledge and Sincerity, of thoſe Sagacious Propagators of Truth, are Unqueſtionable; for, although the Publication of theſe Truths,

Truths, is modern; yet they Agree with the Tenor of all Antiquity; and with thoſe Original and Antient Truths, which are Recorded in the Oldeſt Statute, or *Magna Charta*, now Extant, and herein Printed *Verbatim*.

It is therefore preſumed, That the Genuine Sons of This, or any other Univerſity, will not, after theſe **Teſtimonies**, Write or Argue, That although *Britons* ſhould be oppreſſed, and illegally deprived, of their Liberties, Properties and Lives, and, perhaps, under the Colour and Pretext of Law too; and although thoſe **Legal Means**, which this Form of Government, hath inſtituted, are ſufficiently powerful, to *Reſcue* and Defend, their Hereditary Rights and Privileges, from under ſuch **Arbitrary** Proceedings; yet that there is an **Occult Law**, which Reſtrains them, from the Uſe of thoſe **Means**, if ſuch Writers ſhould Appear, yet thoſe very Men would expoſe Arguments, urged to a ſick Man, or to a hungry Man, who hath Medicines or Proviſions before him, that would effectually Remove his Pains, or ſatisfy his Hunger; but that there is an **Occult Law**, which obliges him, rather to Apply to Providence, with Prayers and Tears, for Relief, than to uſe thoſe Medicines, or to eat thoſe Proviſions; I ſay, ſuch Writers, would expoſe ſuch Arguments, as **Groſs Abſurdities**; and therefore, if there be *Abſurdity* in the one Caſe, and not in the other, Let them be Diſtinguiſhed: Becauſe ſome Mens Reaſon tells them, That as *Means* are neceſſary, to preſerve the *Natural* Conſtitution, ſo *Means* are neceſſary, to preſerve the *Political*; for the Contrary is as *Abſurd*, as to ſay, That when a Man's Houſe is on Fire, it is not lawful, to throw in Water, to quench that Fire.

SECT. XIX.

The Laſt Evidence of this Conſtitution, which muſt neceſſarily conclude all Men, is an Irrefragable Argument, drawn from this whole Syſtem, *viz.*

That *the* Supreme, *Abſolute, and* **Arbitrary** *Power, in every Government and Nation, is the* Legiſlative Power, *of Making and Altering thoſe Laws of it, by which every Man is to be Bound, and to which he is to pay his Obedience.*

But,

But, *in* Great Britain, *the King by himſelf, or the Lords by themſelves, or the Commons by themſelves* ſeparately, *never had an Authority, to make, or alter, or ſuſpend, or diſpence with, any Laws, nor ever did make, or alter, or ſuſpend, or diſpence with, any Laws, by which any Man ever was, or ever could be Legally Bound; but all the Laws of this Nation, that are, or ever were Obligatory, were made by the Joint Conſent, and Authority of the Three Eſtates, of King, Lords, and Commoms, in Parliament Aſſembled.*

Therefore, 'till it can be ſhewed and maintained, *That the Power, of making and altering, or ſuſpending or diſpenſing with Laws, is not the Supreme and Abſolute Power; or that Laws were ever made, or altered, or ſuſpended, or diſpenſed with, in* Great Britain, *by ſome Authority, other than and beſides the* **Joint** *Conſent and Authority, of the Three Eſtates, of King, Lords, and Commons, in Parliament Aſſembled*; The *Concluſion* muſt ſtand Irremovable, *viz. That the Fundamental Form and Parts of this Government, in the Original Inſtitution of the Three Eſtates, and the Diviſion between them of the Legiſlative Power, were, in the* FIRST FORMATION *of them, Inſtituted and Agreed on, at the ſame Time, after the Manner before Deſcribed.* And the rather, for that it is an Inconſiſtency, monſtrous in itſelf, to ſuppoſe, *That thoſe Important Parts or Shares, Allotted* equally *to the Three Eſtates, in the Legiſlature, which are the Grand and Only* **Pillars** *(upon which the Weight of the whole Conſtitution ſubſiſts) could have a Formation, or Commencement, at different Times, or otherwiſe, than by the Original Stipulation, and Inſtitution before ſpecified.*

If the Political Authority and Power, of any one of the Three Eſtates, had had an *Exiſtence* before the other of them, then that Firſt Single Eſtate, had had the Sole Abſolute Power, becauſe in that Caſe, there could be no other Power to circumſcribe, or confine the **Power**, of that one Primary ſingle Eſtate.

There's no doubt, But that if any ſuch **One Single** Original Eſtate, had had an *Exiſtence*, or Being in Time, before the other of them, ſome Emanations of its Power, and ſome Authentick Inſtances, or Memorials, or Footſteps of the *Exerciſe* of that Power, would have remained amongſt us; but none

ſuch

ſuch appearing, Reaſon concludes, There never was a **Government** in this Nation, by any ſuch one Original *ſingle Eſtate.* that is, *That there never was, in this Land, any* **Monarchy**, *or Kings, that had the Sole, Abſolute, and Legiſlative Power, to make and alter the Laws*: That *there never was, in this Land, an* **Ariſtocracy**, *or Houſe of Lords or Nobles, that had the ſingle Abſolute Power, of making and altering Laws.* And, Laſtly, That *there never was, in this Land, a* Democracy, *or Houſe of Commons, that had the ſingle Abſolute* Power, *of making and altering Laws*;

For, *De non Apparentibus, & non Exiſtentibus, eadem eſt Ratio*; and, therefore, the **Proof** is Invincible, That the Primitive and Original *Form*, of the Government in this Nation, was at Firſt Founded, Formed, and Made, in ſuch Manner, as is above Aſſerted.

SECT. XX.

TO all theſe Proofs of the Conſtitution, may be Added this Argument, That *if the Viſible Things in this World, which are made and created, do* (as doubtleſs they do) *prove the Invi-ſible Power, of the Great Maker and Creator, to be Omnipotent, and Eternal*: Then it may be inferred, in a ſubordinate Manner, from the **Form** of this Government, and the Admirable *Frame* of it, that are now Viſible and Apparent; whereby Strength, Security, and Honour, is Diſtributed and Conveyed, to each of the *Three Eſtates*, of King, Lords, and Commons; That *he muſt be Inexcuſable, who will not ſee, and conclude, and acknowledge*; *That every Part of this* People *had a Great Share in the firſt Formation of it, and that they were Rational and Thinking Men*: For the Eſſence of a Thing, is diſcovered and known, by the Properties of that Thing.

SECT. XXI.

AS to the Evidence and Proofs of the ORIGINAL CONTRACT, entred into by King and People, touching the Government of this Nation;

Natural Reaſon convinceth every Man, That the proper Signification of a **Contract** is, to make an Agreement, containing the Matters of State, to be, by each of the contracting Parties, obſerved: And, after that, each Party Swears to the other, to perform the Parts of the Agreement; which, on his Part, are to be performed.

The Difficulty of proving the *Original Contract* was, in Finding out, and Aſcertaining the ſeveral Articles, or Heads of the Original Agreements, which were at firſt made and inſtituted, for the *Forming* and Erecting this Conſtitution; *When* thoſe are found out, and proved; the **Original Contract** entred into, by the Governor and Governed, to obſerve them, are but the Natural Conſequence and Efflux of the former; for Caſes of the like Nature, are plentiful; As when *Abimelech* and *Abraham*, whoſe growing Power *Abimelech* feared, had made an Agreement, That *Abimelech* ſhould reſtore to *Abraham*, the Well he had digged at *Beerſheba*; and that *Abraham* ſhould not deal falſely, *i. e.* ſhould not Invade or Diſpoſſeſs *Abimelech*, or his Son, or his Son's Son, of their Country called *Gerar*; they **Contracted** with each other, by Swearing to perform that Agreement, which was, as between them, an *Original Contract*; and this Contract was Renewed between *Iſaac* and the ſame *Abimelech*: Multitudes of other Contracts, of the like Nature, might alſo be Remembred.

But the expreſs Evidence and Proof of the **Original Contract**, for the Government of this Nation, may he Inſiſted on, and Extracted, from the Clauſe of the Act of Parliament of the 17th of King *John*, which was penn'd in the Form of a Charter after mentioned; for, after all the Articles and Heads of the Manner and Form of the Government, were written and ſet down, in that Statute or Charter; then was inſerted therein, the **Contracting** Clauſe, in theſe Words; *Juratum eſt autem tam ex parte noſtra quam ex parte Baronum, Quod hæc omnia ſupradicta, bonâ fide, & ſine Malo Ingenio, obſervabuntur*; i. e. It is alſo Sworn, as well on the Part of the King, as on the Part of the People, *That all theſe Matters above written, ſhall,* bona fide, *and without Artful Evaſions, be obſerved.*

This Clauſe proves, that this Statute or Charter contains, not a Grant to the People, of New Privileges, but a *Declaration* of thoſe

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Original Parts or Conſtitutions, which compoſed the Form of this Government, eſpecially thoſe grand Articles, touching Holding Parliaments, Impoſing Taxes, and providing a Specifick Remedy, or Means, for Reforming the Breaches of theſe Conſtitutions, if they ſhould happen to be Broken and Violated; for if this Charter had contained only Grants or Benefactions to the People, of *New Privileges*, flowing from the King's mere *Bounty* and Favour, it had been a monſtrous Proceeding, to find, in the very Charter, or Grant itſelf, the King and People, upon equal Terms, mutually Swearing and *Contracting*, with each other, to obſerve the Matters therein expreſſed; for it is contrary to common Senſe and Reaſon, to imagine, that a generous and kind Benefactor, would have *ſuffered Terms* of that Nature, to be *Impoſed* on his own Bountiful Donation: The Inference therefore is Concluſive, That this Clauſe is a Renewal, or Repetition, of the **Original Contract**, entered into by King and People, which was Inſtituted at the Firſt Formation of this Government.

This Evidence made is much ſtronger, by that Act of Parliament, which was made Ten Years after King *John*'s Charter, and is the **Firſt**, and moſt Eminent Law, that is Printed in our Statute Book, called MAGNA CHARTA, although it is Penn'd after the Manner and Form of a Charter.

For the expreſs **Contents** of this Statute, are, That many of the Important and *Antient* Articles, and Terms of the *Original* Conſtitution, ſhould be written down, and ſpecified; which the King was to be obliged, on his Part, for Ever, to *Obſerve*; and which the People were to be obliged, on their Part, for Ever, to *Perform.*

The King was, on his Part, to give the Royal Aſſent thereto, as a Teſtimony of his Conceſſion, or Agreement.

The Lords and Commons were, on their Parts, to give the King, as their Gift, in Exchange for ſuch his Gift of the Royal Aſſent, a great Tax, *viz.* One Fifteenth of all their Moveables.

The particular Articles need not be Repeated, becauſe they are printed in the Statute Book.

The

The Expreſs Words of this *Magna Charta*, purporting the **Contract**, were theſe;

Omnes autem iſtas Conſuetudines, & Libertates prædictas, quas conceſſimus, in Regno Noſtro tenendas (quantum ad nos pertinent) Erga nos & hæredes noſtros obſervemus.

Et omnes de Regno Noſtro, tam Clerici quam Laici, obſervent (quantum ad ſe pertinent) erga ſuos.

Pro hac Donatione & Conceſſione, Libertatum iſtarum; Archiepiſcopi, Epiſcopi, Comites, Barones, Milites, Liberi Tenentes, & omnes de Regno Noſtro, **Dederunt** *Nobis, Quinto decimam partem omnium Mobilium ſuorum.*

In *Engliſh*, thus;

We will (*as far as concerns us, and our Heirs*) **obſerve** *for Ever, All theſe Cuſtoms and Liberties aforeſaid, which we have* Conceded (*i. e.* Agreed to) *to be holden, within our Kingdom.*

And all the Men of our Kingdom, ſhall, as far as concerns them, **obſerve** *the ſame on their Part for ever.*

For this Gift of our Royal Aſſent, and for Conceding *to theſe Liberties, the Lords and Commons have* **Given** *to us, as their Gift, the Fifteenth Part of all their Moveables*; (i. e. a Tax ſo called).

From theſe Words, are Apparent.

I. That this Statute was a Renewal, of the **Original Contract**, becauſe the King could not, at this Time, by a new Gift, Create, or Grant Antient Cuſtoms, but *Conceded*, and Agreed to obſerve the Old ones.

II. The Lords and Commons, for Peace Sake, *purchaſed* the Royal Aſſent, to a Re-eſtabliſhment of their Rights and Liberties, to prevent their Contending with this King, to Aſſert them, as they had Contended with his Father King *John*; and therefore the *Contract*, or Bargain, was compleated, by Payment of the Money.

III. That

III. That all this whole **Contract** and Proceeding, was an Act of Parliament, and was Stipulated and Settled in Parliament, becauſe the Lords and Commons, could not *Give* or *Grant* to the King, a Tax, but in Parliament; which proves, that the Commons were, at that Time, One of the Three Conſtituent **Eſtates** in the Government.

IV. This Printed *Magna Charta*, as well as King *John's* Written one, mention ſeveral Sorts of Original Writs, *viz.* Aſſizes of *Novel Diſſeiſin*, of *Mort D'Anceſtor*, of *Darein Preſentment*, the Writ which is called *Precipe in Capite*, and an *Appeal of Death*: All which Original Writs, were as old as the Government, and Commenced in the Reign of the Firſt King; which proves, That nothing New was now Tranſacted, but the Old and *Original Contract* was Renewed.

One **Clauſe** in this Printed *Magna Charta*, may occaſion ſome Speculation, *viz.* That although in this Printed *Magna Charta*, by the Dark Contrivance of *Hubert de Burgo*, Five Material Clauſes of King *John's Magna Charta*, have been omitted, as will herein after appear; yet ſome true **Patriot** procured this cautious and provident **Saving**, to be Inſerted, *viz.* [*Salvæ ſint Archiepiſcopis, Epiſcopis, Cœnitibus, Baronibus, & omnibus aliis tam Eccleſiaſticis perſonis quam Secularibus; omnes Libertates & liberæ Conſuetudines quas prius habuerunt*: i. e.] *There ſhall be Saved to the Lords and Commons, All the* Liberties *and free Cuſtoms, which they, before this Printed Statute of* Magna Charta, *had, or were Intitled to.*

This **Saving**, therefore, extends to preſerve to the People, the Right and Benefit of the Five omitted Clauſes; and the People, in all Times afterwards, ſo underſtood it; for this Printed *Magna Charta*, containing this Renewal of the *Original Contract*, and this *Saving*, was afterwards confirmed by Thirty ſeveral ſubſequent Acts of Parliament.

But, if what the Statute of 12 *W.* III. *cap.* 7. Aſſerts, is true (as who can deny it?) *That the Records in the* Cottonian Library, *are the Beſt, which are any where extant, and moſt uſeful, for the Knowledge of the Conſtitution*; Then the Original Written Statute, or Charter of King *John*, now extant under the Great Seal, whole and unbroken, in the *Cottonian Library*, being

the oldeſt Record extant, and containing an expreſs **Contract** to Renew, or Reſtore the Conſtitution, is an Evidence as ſtrong, as can be demanded, to prove, That at the Firſt Formation of this Government, a *Contract* was made to obſerve it, which muſt neceſſarily be ſtiled, the **Original Contract**: It is, however, unqueſtionable, that this *Proof* of the *Original Contract*, cannot be encountered with, or contradicted by, any other of Equal Clearneſs or Authority.

It ſeems, therefore ſuperfluous, to offer any further Evidence, by or from the Authority, of any of our Sages, to prove this Conſtitution: Foraſmuch as, That, which already hath been produced, is enough to ſatisfy any Man, that hath not fully determined, to hold the contrary: However, this Problem may be, with Modeſty enough, advanced, That *if an Iſſue were Joined, and to be Tried by an Indifferent Jury, at the Bar of any of the Courts in* Weſtminſter-Hall, *to try whether this Conſtitution was, in the Origination of it,* **Formed** *in the Manner above deſcribed; and whether ſuch an* **Original Contract**, *were made and entered into, by King and People, to obſerve it,* as is before Aſſerted; it is preſumed, That *the Evidence before produced, would be ſufficient to prove the Affirmative, and to obtain a Verdict; or at leaſt, that the Proof here produced, is ſufficient to turn the contrary Proof, on the adverſe Party.*

SECT. XXII.

BUT it is as Unaccountable, as it is Certain, That this Conſtitution hath not found greater Enemies, than ſome Gentlemen, that are called the Learned (probably in the Civil Law) who have buſied their whole Lives, in ſearching for, and ſetting in Array, *Opaque*, and dead Evidences, of ſome Tranſactions, that were never acquieſced under, nor admitted as Concluſive, nor accompanied with a quiet Poſſeſſion; for no other End, than to miſlead our Supreme Governors, and to debilitate the Legiſlative, and other Hereditary Rights, Powers, and Privileges, of the Two Eſtates of Lords and Commons; and to render the Regal Power, Abſolute and Unlimited. What **Topicks** of Reaſoning, have they left uneſſay'd? What Texts of Scripture, have they left unperverted? What Hiſtories and Writings of Foreigners, and Foreign Nations, have they left unſearched? *And what* Inconſiſtences in Nature, have they left unattempted? to collect Materials, partly to

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Batter and Beat down, and partly to Sap and Undermine, this Conſtitution and happy *Form* of Government?

These Writers, in order to ſupport their Schemes, have endeavoured to Advance Two Things; First, *To make the Lords Spiritual, one of the Three Eſtates, Diſtinct from the Lords Temporal*, Giving this Single Reaſon for that Hypotheſis, *That the Lords are called by Two Names, Lords Spiritual, and Lords Temporal*; whereas they might, with as good Reaſon, divide and make Three Eſtates of the Commons, becauſe they are called *Knights, Citizens*, and *Burgeſſes*. Secondly, These Writers deny the Regal Power to be Derived from this Conſtitution, inſomuch, That *if the People of the* Low-Countries *ſhould change their Republican Government, and inſtitute Three Eſtates of King, Lords, and Commons, after the Similitude of* Britain; these Writers would Aſſert and Maintain, That *ſuch a King of* Belgia, *would derive his Power, not from ſuch a New Conſtitution, but would have an Abſolute Power, immediately from God himſelf, without any Limitations impoſed by their human Inſtitution.* Which Notion is none of the leaſt of their Enthuſiaſms.

These Writers have, nevertheleſs, Differed amongſt themſelves; for ſome of them have Center'd in this **Poſition**, *That the ſeparate Rights and Privileges of the Two Eſtates of Lords and Commons, did, at firſt, commence by Grants, or* Conceſſions *from our Firſt Kings*; that is, That ſome of our Firſt Kings, did Give and Grant to the Commons, the Privilege of being a Third Eſtate, and to have an equal Share, Jointly with himſelf in the Legiſlature; and other Privileges, and eſpecially that peculiar Right or Privilege of *Giving* or *Denying* Monies or Supplies to ſupport the *State and Government*; and, in like Manner, Granted to the Lords, the like Privilege of being a Third Eſtate, Jointly with himſelf in the Legiſlature, and alſo their other Privileges, *&c.* which is a Principle, not only Monſtrous in itſelf, but of the worſt Complexion, becauſe it includes theſe tacit, and pernicious, or occult Qualities.

I. That if that Part of the Legiſlature, which the Houſe of Commons claims and enjoys; or if their Hereditary Privilege and Sole Right of Giving or Denying Money, for the publick Service (which implies the Sole Power over their own Properties) were Derived, by Grants or *Conceſſions*, from the King, then

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the Inference is Undeniable, That *the King had* **Originally**, *not only the whole and ſingle Legiſlature, and the abſolute Power in himſelf*, Prior *to all other Ordinances*; *but alſo the Original Property and Ownerſhip, in, and over all Mens Lands and Goods, and particularly over Noblemens Lands and Goods*; becauſe no Man can Grant, or Transfer to another, a Greater Right, or any Right, but what he hath himſelf.

II. That if the Houſe of Commons's Share, in the Legiſlature, and their Sole Power and **Privilege**, of Giving or Denying Money for the publick Service, be *Derived* by and under Grants or Conceſſions from former Kings, Then an untoward Quality is incident to all Grants of Power and Privileges, *viz.* a **Tacit Condition**, or Truſt is Implied, That *if the Grantee breaks the Condition, or Acts contradictory to, or inconſiſtent with, that Truſt*, i. e. That if the Houſe of Commons **Refuſe** to give Money for the Publick Service, acting therein contrary to the End, for which that Power, or Privilege, was *Given to and Intruſted with them*, by the Original *Donor*, **Then the Condition** or Truſt being broken, the POWER will Naturally Revert and Devolve back, to the Original *Grantor* (the King); and that he may, in ſuch Caſe, Reſume and Exerciſe that *Power*, which his Grantee refuſes to execute, *viz. To Levy, on his People, what Taxes, and Impoſe on them, what Laws, he pleaſes.*

If ſuch a Notion were Granted (as it is not, but is utterly Denied) theſe Learned Enemies would proceed and argue, That *there is, or Originally was, neceſſarily annexed to the Crown, a* **Sovereignty**, *that is Inherent and Inſeparable*; (to wit) *a* POWER *to Review the Rights and Privileges ſo Conceded*; And that if it ſhall be found, *That thoſe former Kings were Impoſed on, or the* Royal Dignity Hurt, *or by thoſe Conceſſions Impaired*, That then thoſe Rights and Privileges may be **Retalled**, and made Void; and the King may, in that Caſe, *Reſume* his Original, Abſolute, and Supreme Legiſlative Power, to Govern and Impoſe Laws without them: For, in that Caſe, What could Limit or Bound him?

Theſe are the plain Conſequences of thoſe Writers Learned Arguments; than which, nothing can be more **Traiterous**, or Deſtructive, to the Original Rights, and Hereditary Powers and Privileges of the Two Eſtates of Lords and Commons; but as to the *Truth* of their Notions, they can ſhew no other Evi-

dence

dences or Foundations for them, than their own Imaginations; For the Fundamental Rights, Powers, and Privileges of the Two Eſtates of Lords and Commons, as they have been, in all Times Challenged and Enjoyed, might, in the Original, be *Statutable*, and commence by *Contract* or *Stipulation*; but were, by no Means **Grantable**, the ſame being *Inconſiſtent* with the Nature of *Grants*; for many other Powers and Prerogatives, which, by this Conſtitution, are Annexed to the Regal Dignity, are not Grantable or Alienable; As for Inſtance, *The King cannot make another King, of any Part of* Britain, *or Grant to another, the Allegiance of any Part of his Subjects*; becauſe Subjects cannot be Bound, in any Contract with a Stranger; that is, *That the King cannot Grant to another, any Part of his Kingly Office or Royalty.*

And as to other Royal Powers, which the King, as Supreme Governor, is to Exerciſe, he cannot Grant to *John* at *Styles*, That *he, the Grantee, ſhall, in his own Name, call, or hold Parliaments, or pardon Offences or Offenders, or hold Courts of Juſtice, in his own Name, or, in his own Name, make Judges*; &c. *or, in his own Name, make War or Peace, or Treaties or Alliances with Foreign Potentates*; for theſe, and ſuch-like Powers are Inſeparable and Incommunicable; and, if that be ſo, the next Queſtion is, Who Reſtricted, and made thoſe Powers, to be Inſeparable and Incommunicable?

It is therefore Unnatural to ſuppoſe, *That any King, that had in himſelf the* SOLE LEGISLATIVE POWER, *to make and alter Laws* (which is that *Power* only that is Supreme and Sovereign) *ſhould or could Grant two Third Parts, of that* Legiſlative Power *to his Subjects*; which is no other than to make them his **Partners** in the Sovereign, Supreme, or Legiſlative Authority; nor can it be preſumed, That *any King, that had in himſelf a* POWER *over all Mens Properties to take what Part of it in Money, or otherwiſe he pleaſed, to ſupport his Government, when the Occaſions of State required, ſhould, or could* Grant away *that Power to his Commons, and make them* **Judges** *of thoſe Occaſions*, i. e. To Examine and Judge, whether thoſe *Occaſions* of State were, or were not, neceſſary or convenient to be ſupplied or ſupported.

And, therefore, ſince ſuch Conceſſions are *Unprecedented* in the whole World, and not to be ſuppoſed, the **Concluſion** is pregnant, That *it is* Impoſſible *that this Conſtitution of the Three Eſtates, had any Commencement, or could be* Formed *by any other Means, than by* **Contract**, as is before Repreſented.

Others of theſe Learned *Writers* have, in ſome Sort, differed from the former, and have **Denyed** the Two Eſtates of Lords and Commons to be, in any Sort, *Legiſlators*; or to have any Authoritative Power, in the Making or Altering Laws; but have allowed them a Right to be *Counſellers*, and to have that Right too, only from *Royal Conceſſions*; Inferring, That *the King may take or reject their* Counſels; *or call them, or not call, or aſſemble them together, to give ſuch* Counſel, *at his Abſolute Will and Pleaſure.*

It is true, that ſome of our Kings, following the Advice, of ſuch Notional Writers and Counſellors, have ſometimes challenged an Abſolute **Arbitrary Power**, to Govern without Parliaments, Denying to do Juſtice to the Nation, by Aſſembling, or permitting the Two Eſtates of Lords and Commons, either as *Counſellors* or *Legiſlators*, to be convened, or to ſit, or to concern themſelves therein, and have Aſſumed a Legiſlative **Power**, Exacting Obedience to their Edicts or Proclamations, as if they had the Force of Laws, and, by that Means, have put the **Queſtion** in Iſſue, between them and the *Britiſh* People; but in the **Tryals**, always Failed, and could never prevail; all which enforce the Proof of the *Poſition*, before inſiſted on, That *that Poſition or* Theſis (notwithſtanding ſome pert Gentlemen have called it pernicious, *is True and* Magiſterial, *viz.* That the Rights, Powers, and Privileges *Statuted*, Diſtributed and Imparted to the Lords and Commons, as Two **Eſtates** in the Formation of this Government (which are, by the plain and natural Ways and Means before mentioned, Deſcribed) were Original and **Conſtituent** Parts, of the Government, **Equally** as old, and firm, and ſtrong as thoſe Inſtitutions, by which the Rights and Prerogatives of the Regal Supreme Office, were Diſtinguiſhed and Eſtabliſhed.

And

And that all Suppoſed Syſtems, and *Forms* of Government in *Britain*, which do not conſiſt of, or do differ from, thoſe Three Eſtates, are *Non-Entities* and Erroneous, and merit no Anſwer.

The **Injuries** and Detractions, therefore, which the Conſtitution hath often received, from the Endeavours of theſe Learned Adverſaries, have ſometimes met with Parliamentary Confutations and Chaſtiſements: And therefore, **Let** every honeſt *Briton* contribute his Aſſiſtance, to Maintain this Fundamental Form of Government, and to render the **Efforts** of ſuch Enemies to it, as *Ineffectual*, as were thoſe Floods and Storms, which Beat on the Wiſe Builder's Houſe, and it Fell not, becauſe he had Built it on a Rock; And as an **Anathema** againſt the Subverters of this *Form* of Government, and happy Conſtitution, let their *Endeavours* End in Diſappointment! and **Confuſion** cover their Faces!

SECT. XXIII.

BUT before the *Subject Matter* of Evidences of the Conſtitution is parted with, it is material to obſerve, That Proofs in Law are often inferred and allowed, *a Simili*, *a Pari*, *i. e.* from *Parity* of Reaſon, in Caſes of the like Nature; No **Caſe**, therefore can bear a nearer *Similitude* to the Original Formation of this Conſtitution, than the late Formation of the UNION, between the Two Nations of *England* and *Scotland*; for when the *Union* came under Conſideration, the *Subject Matter* of it appeared to be an **Alteration** in the Legiſlature; in the Parliament; and in the Succeſſion to the Monarchy; and a **Subverting** the Partition Wall, by communicating to the People of each Nation, an *Equality* in the Rights and Freedom of Trade; and an equal Participation in all the publick Rights, Security, and Civil Government of each Kingdom: **None** of which could be new *Formed*, or Derived, by, or under *Grants* from the Crowns of either Kingdom, to the People of the other: The CROWN of *England*, could not grant to the People of *Scotland*, the like Hereditary Privileges in *England*, as *Engliſhmen* enjoyed; neither could the CROWN of *Scotland*, *vice verſa*, grant

to

to the People of *England*, the like Hereditary Privileges in *Scotland*, as *Scotſmen* enjoyed.

Whereas, if the *Original Power* had reſided in the Crown, nothing could have reſtrained the Exerciſe of ſuch *Power*, becauſe no Man can ſay, *That when the Crown hath legally granted any one Specifick Thing, it could grant juſt ſo much, and no more*; or, *That all its Power was, by ſo doing, Exhauſted*; or, *That the Crown had not Power left to make another Grant of the like Nature.*

The **Materials**, which were to compoſe the UNION, being not *Grantable*, might, however, be *Statutable*, and might Commence by mutual **Contract** and Agreement. The *Subject Matter* of the Union, came, therefore, neceſſarily under the Debates of the Commiſſioners, whom the contracting Nations Deputed and Impowered; and thoſe Commiſſioners, repreſenting the *General Aſſemblies* of the People of each Nation, entered into an **Original Contract**, by which they Moulded thoſe Materials, *as the Potter doth his Clay*, into a New **Form** of Government or Conſtitution; (to wit) *That* England *and* Scotland *ſhould be for Ever* UNITED, *and Incorporated into one Kingdom, by the Name of* **Great Britain**: *That the* SUCCESSION *to the Monarchy, ſhould be only in the Proteſtant Line of the Royal Family, excluding all Papiſts*: *That the* United *Kingdom ſhould be for Ever Repreſented, by one and the ſame* Parliament, *to be Stiled the* PARLIAMENT OF GREAT BRITAIN: *That all the Subjects ſhould for ever have, full* Freedom *of Trade and* Navigation, *and a Communication of all other publick Rights, Privileges, and Advantages*: And, *That a* **limited** *Number of the Peers, and Commons of* Scotland, *ſhould Sit and Vote with thoſe of* England, *in the* New Parliament.

Now, if this New Conſtitution or Government, could not, in that Modern Caſe, be formed by any other Means, than by a mutual **Contract**, the Proof is Strong, from the Parity of Reaſon, That the **Original** Conſtitution, of the *Three Eſtates* of King, Lords, and Commons, could not be at firſt, *Formed* or Faſhioned, otherwiſe than by *Contract*, after the Manner before Aſſerted, becauſe the *Modern* Caſe bears a near Reſemblance to the **Antient.**

But

But the late *Union* furniſhes an Objection againſt the Propriety of the Title, given to this Undertaking of the *Britannic Conſtitution*, becauſe *England* and *Scotland* appear to be *diſtinct Nations*, having diſtinct Governments.

The Anſwer is, That the late *Union*, ſeems to be a **Re-union**, in Regard the Antient Name of the Iſland, was BRITAIN, and the *Diſunion* was Accidental; for **Memorials** are extant, which prove, That when the *Romans* ſubdued *South Britain*, they could not ſubdue thoſe *Britons* who Inhabited and Defended the Northern Parts; but rather choſe to ſecure their Conqueſts in the South, by *excluding* the Northern People, with *ſtrong Walls*, made acroſs the Iſland.

In this Place the **Situation** and Climate of *Scotland*, and the Conveniencies and Inconveniencies, that attended that *Situation*, deſerve ſpecial Notice and Obſervation.

As to the Conveniencies of the *North Part* of the Iſland, it muſt be admitted, That although it is Inferior in Fertility to the *Southern*, yet thoſe Northern Parts have produced a **Race of Men**, to whom Nature has given Minds and Capacities, naturally propenſive to *Learning* and *Knowledge*, and Bodies of Strength, Beauty, and Courage, *Equal* to any Nation under the Sun.

As to the Inconveniencies of the *Situation* of *North Britain*, their *Borders* on *England*, ſubjected that People, to Invaſions and Conqueſt, from that Larger, Richer, and more Populous Country, which obliged the *Scots*, in their own Defence, to become *Dependent* on Foreigners, and particularly on the Crown of *France*, for Aſſiſtance, to prevent their being *oppreſſed*, by the Numbers and Powers, of the *South Britons*.

It is here Remarkable, That the *North Britons*, providently Imitated the *Reubenites*, *Gadites*, and Half Tribe of *Manaſſah*; for as thoſe *Tribes*, before they retired over *Jordan*, built a *large Altar of Stone*, to be a Witneſs, That the River

Jordan was not to be a *Border to Exclude*, or Shut them out, from having a Part in the Worſhip of the true God; ſo the *North Britons* provided, by the **Union Contract**, that the *Crown*, *Sceptre*, and *Sword of State*, of their Nation, ſhould for Ever Remain with them, as a Witneſs, That they had had a Sovereignty, or Government, *Independent* of *England*; and that they, in Exchange for their own *Independency*, and Privileges of *North Britons*, had acquired an *Equality*, in the Liberties, Privileges, Trade, and Security of *South Britons*.

BREACHES

BREACHES OF THE CONSTITUTION.

CHAP. III.

SECT. I.

As to the Breaches of this Fundamental Form of Government or Conſtitution, and of the Original Contract to Obſerve it, and the Conſequences of them; and the Means, by which thoſe Breaches were Repaired: It may be premiſed;

I. THAT if the Principles of Virtue and Vigour, Inherent in the Original Conſtitution of this Government, may be Judged of, by its Duration and Repeated Reſurrections, from under the moſt powerful Oppreſſions, or from the Confuſions it hath brought upon the Violators of it: Then this *Conſtitution* may juſtly be Intituled to that Glorious Motto of *Scotland, Nemo me Impune Laceſſit.*

II. That

II. That the numerous Rectifications of theſe **Breaches**, according to the Rules here Inſtituted, are the beſt Looking-Glaſs, to Demonſtrate the Original, and Fundamental Form of this Government; becauſe a Law or Conſtitution, cannot be ſo well known by any Thing, as by Precedents and conſtant Uſage, and by **Reformations** of the Abuſes and Violations of it.

Theſe Breaches may be Divided, into Queſtions about Breaches ſuppoſed to be made ſeparately, either on the Part of the King, or on the Part of the Lords, or by the Commons; and about Breaches, which may be ſuppoſed, to be made by the Three Eſtates of King, Lords and Commons.

SECT. II.

AS to Breaches made in the Reigns of ſome of the Kings of this Nation.

That which ought to hold the primary Place, was, Their permitting the Biſhop of *Rome*, and his Eccleſiaſticks, to **Accroach** within this Kingdom, a **Supremacy**, or Supreme Power, not only Independent of, but Superior to, the Crown, and the Laws of the Land; which they Termed *Imperium in Imperio*, ſetting the Mitre above the Crown: by which Power they drew to **Rome**, the Cognizance and Juriſdiction of all Spiritual Matters, and, as Depending thereon, or Mixed therewith, many of the Temporal, *in Ordine ad Spiritualia*, Cauſing not only the King, but many of his Subjects, at their Immenſe Charges, to become Suitors at his Foreign **Tribunal**.

The Conſequences of this Breach were, beſides the Diſhonour of this Government, infinite Troubles, Charges, and Damages to the People: But that which made this *Supremacy*, the more Inſupportable, was, becauſe it included an **Arbitrary** Power, Inconſiſtent with this Conſtitution, and infinitely Superior to the Rights of the Prieſthood, Inſtituted by it: For the **Juriſdiction** of the Eccleſiaſtical Courts, or of the Church and their Cenſures, as the ſame were Aſſumed and Practiſed, were, and yet continue to be, Unlimitable and **Arbitrary**, the ſame being founded on the Rules and Maxims of the Civil Law, and upon Canons

Canons or Statutes made by the Clergy at *Rome*, and in other Foreign Countries; and by thoſe Means, Uſurped a Power, unknown to the Conſtitution, and Laws of *Britain*.

This *Romiſh* Supremacy, was Inconſiſtent with the Fundamental Conſtitution, inaſmuch as the Clergy, under the Boundleſs Influence of the Biſhop of *Rome*, Accroached a Power in their Convocations, to impoſe Taxes, and levy Money upon themſelves, and to give and raiſe Aids for our Kings, called Benevolences, in many Caſes, and for ſuch Purpoſes, as the Commons of the Kingdom judged Unneceſſary and Inconvenient; which Aids ſo given by the Clergy, when the Monaſteries poſſeſſed vaſt Tracts of Land, Amounted to little leſs than what the Parliament could give and levy on the Reſidue of the Nation beſides them: This grand Power produced a Pretence for another as extraordinary, *viz.* the Clergy Aſſumed, and Claimed to be a Diſtinct Eſtate in the Government, Independant of the Two Eſtates of Lords and Commons; and from that Root ſprung a Diviſion in *Britain*, and a Contrariety in the National Meaſures, which the Original Conſtitution had provided ſhould be United and Indiviſible.

But the High Spirit of King *Henry* VIII. could no longer bear this **Uſurpation**, nor ſubmit to a Foreign Superiority or Judicature: And therefore he, and, by his Encouragement, his Parliament, Joined, in Repairing that notorious Breach, and *Reſtoring* to the Government, and the Regal Eſtate, that **Antient** Dignity and Supremacy, with which it was at Firſt Inveſted; and they for ever Baniſhed and Extirpated, or, at leaſt, effectually Maimed, that *Supremacy*, which the *Romiſh* Prieſthood had, by Little and Little, Gained and Uſurped, and Ordered an Addition to the Church of *England*'s Liturgy, or Litany, to be made in theſe Words, *From the Tyranny of the Biſhop of* Rome, &c. *Good Lord, Deliver us.*

SECT. III.

THE next **Breach** of the Conſtitution, in the Reigns of ſome of our Kings, was, Their Creating many Corporations of the *Romiſh* Eccleſiaſticks, under a Pretence to Enable them to reſide together in Bodies, and to Exerciſe more than ordinary Devotion, and Regular Lives, with unlimitted Capacities

to acquire, by Donations and Purchaſes, what Lands they were Able.

This Practice (though at Firſt well meant) became Inſenſibly, a *Ruinous* **Mortification** and Breach of the Conſtitution: For theſe Fraternities, not Content with the inactive Hopes of the next World, became the moſt Sublimated Genius's in acquiring Riches, Grandeur and Dominions in this World, not ſparing, but ſtripping the very ſecular Clergy of their beſt Revenues. The Grand Engines (whereby their Deſigns upon the Laity were Effected) being the *Ingroſſing* to themſelves, what Learning there was in the Nation, and Spreading over the People *Ignorance* and *Superſtition*, Infinite was their Succeſs and Progreſs, until the Nation became weak, and *Bowed down* under the Weight of their Acquiſitions. The Inconveniencies and Miſchiefs whereof, are no where ſo well Repreſented, as in the Conferences which (Mr. *Speed* writes) paſſed in the Caſtle of *Barkhamſted*, between *William*, vulgarly called the Conqueror, and the Great Men of the Kingdom: Where the King held a Great Feaſt and Entertainment.

The Conqueror, after Supper, Demanded the Reaſon, how it came to paſs; *That he, by* One Battle, *near* Haſtings *in* Suſſex, Subdued *the* Engliſh *Nation, which the* Danes, *before him, could not do in many?*

To this Queſtion (when the *Engliſh* ſtood Mute, as Upbraided and Aſhamed) the Rich *Fretheric*, Abbot of St. *Alban's*, ſtepped forth, and Anſwered:

That the Reaſon was Evident; for that Antiently the Nation had been Defended by the **Sword**; *but that the Land Revenues, which Maintained* Martial Men, *having, of late Times, been Converted to Maintain* Holy Men, *the Warriors had therefore, laid their* Swords *on the Altars of Oriſons, and became Votaries: Whoſe Prayers, for your Succeſs, O King! have Pierced Deeper than Swords.* And the Abbot, full of Subtilty, keeping the Intereſt of the **Monaſteries** in View, and not caring what became of the People or Nation, ſo as the Monks and Fryers were Rich, and in Safety, proceeded and ſaid, *O King! your Highneſs is therefore Obliged to Maintain their Peace, who have been the Cauſe of your ſo eaſy Conqueſt!*

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The **Flattery** of the Inſinuation, might have paſſed with other Kings, but this Diſcerning and Penetrating Prince, inſtantly Reply'd, *Is the Clergy then ſo Rich and Strong? And the Nation ſo Weak and Bereft of its Men at Arms? Muſt the Laity lie Expoſed, to the Invaſions of Foreigners, only to keep the Prieſts in Safety? Surely*, out of your own Mouth *will I Judge you, and, for Redreſs, will firſt begin with thee.*

The King, thereupon, took from that Abby, all the Lands that lay between *London* and *Barnet*.

The Diſappointed Abbot haſtened to St. *Albans*, called a Chapter, and declared the *Monaſteries* to be in Danger, and then Fled into the Iſle of *Ely*.

This King's Heroick Reſolution was *Reſpited*, and did not take Place, till the Iniquities of theſe Eccleſiaſtick Bodies became full, at the End of 470 Years, when it was, by his Glorious and Intrepid Succeſſor, King *Henry* VIII. Legally, and Effectually, Executed and Accompliſhed.

SECT. IV.

IT muſt be owned, That *William*, called, *the Conqueror*, by his Invaſion with an Army of *Normans*, and by his Total Overthrow of the National Army, *Daſh'd* in Pieces the **Original Conſtitution**, and did, for ſome Time, by his Armed Forces, Govern with a Power, that was Unlimitted and Arbitrary.

But his Right to the Government, being founded upon **Conqueſt**, that is, Subſiſting merely, by the ſuperior Force of the Governor, Overpowering and Oppreſſing the Governed, the People, in ſome Proceſs of Time, by little and little, Recovered their *Broken Spirits*, and Regained ſome Degrees of their Antient Strength: From which little **Cloud**, though no bigger than a Man's Hand, the Conqueror rightly Judged, *That* Conqueſt *gained no Right; and that his Government founded on it, could laſt no longer, than his Standing Forces could ſupport it; and that the People, ſo ſoon as they could Recover ſufficient Strength*, **would Conquer their Conqueror**; For it

is

is a Maxim in Nature, That *what is Introduced by Force, by Force may be Removed*: The Prince of Truth having ſaid, *That when a Strong Man Armed, keepeth his Palace, his Goods are in Peace*; But, *when a Stronger than he ſhall come upon him, and Overcome him, he will take all his Armour wherein he Truſted, and Divide his Spoils.*

Sanderſon, 133. Hale's Hiſt. of the Law, 1 c. Coke's Pref. to 3 Report.

The *Conqueror*, therefore, to Better, or rather to **Acquire** a Conſtitution-Right, by an Agreement with the People, Waved and Diſclaimed, all Right or Title by *Conqueſt*, and, without pretending to Alter or Change, as in Fact he did not Alter or Change, the Fundamental, or Eſſential *Form* of this Conſtitution or Government; He entered into the **Original Contract** with the People, *viz.* To Govern, conformably to the Antient Conſtitution, according to which, the Government had been Originally, and Antiently, Formed, and had all along, and ſo lately as in the Reign of King *Edward*, called, *the Confeſſor*, been Adminiſtred. But more eſpecially, and particularly, this New King did, in the 4th Year of his Reign, *Anno Dom.* 1071, give the Royal Aſſent, to an Act of Parliament, whereby he Agreed to, and Contracted with, the People, That that Fundamental and Eſſential Part, of this Conſtitution and Government, or rather, That Hereditary Privilege of every Subject of this Nation, whereby it was Provided, *That no Tax, or Tallage, or other Charge, ſhould be Laid, or Impoſed, or Levied, without a Grant thereof in Parliament, ſhould for Ever ſtand in Force.* The Form of the Conqueror's *Magna Charta* (as to this Particular) was in theſe Words, *Volumus etiam & Concedimus, ut omnes Liberi Homines Totius Monarchiæ Regni noſtri predicti, Habeant & Teneant Terras ſuas & Poſſeſſiones ſuas benè & in pacè, liber, ab omni Exactione injuſtâ & ab omni Tallagio: Ita quod Nihil ab eis Exigatur vel Capiatur, Niſi Servicium ſuum liberum, quod de Jure Nobis facere Debent & facere Tenentur, & prout Statutum eſt eis & illis a Nobis Datum & Conceſſum, Jure hæreditario imperpetuum, per Commune Concilium totius Regni noſtri predicti.*

The plain Senſe whereof, is this, *We Will and* **Concede** (i. e. Agree) *That all the Freemen of the whole Monarchy of our Kingdom, ſhall have, and hold their Lands and Poſſeſſions, peaceably and freely, from every unjuſt Exaction, and from every* **Tax** (i. e. from all Manner of Taxes) *ſo that nothing ſhall be Taken or Exacted from them,* unleſs *it be, their free Service,*

which

which they ought of Right to do, and are bound to do, for us, as it is Statuted and Conceded *to them, as their Hereditary Right for Ever, by Us, and our Parliament, or by Act of Parliament*; for the Words (*Commune Concilium Regni*) were the Antient *Latin* for the Word [Parliament].

It therefore appears, That the Articles of this Conſtitution, or Government, were at this Time Reduced into a Charter, or Statute in Writing, although the Record is loſt; for a Copy of it, is Recorded in the *Red Book*, in the *Exchequer*, and the Terms of it, were in the People's Minds Engraven; however, this Potent King, notwithſtanding his Renewing with the People the Original Contract, very Ill obſerved the Terms of it, but in many Inſtances broke it.

SECT. V.

BUT this, however, is obvious, That the Lords and Commons were Attach'd to the *Conſtitution*, and to ſuch Monarchs as would, according to the Rules of it, Adminiſter their Government; ſuch Princes, therefore, of the Royal Family, as *Aſpired* to the Crown, and aſſiſted in the Reſcue of the People, from under the Violations of this *Form* of Government, have found their Contracts and Agreements, to Reſtore and Obſerve the Conſtitution, and to Govern, according to the Antient Rules by it preſcribed, the ſureſt Means to Aſcend the Throne; for, whenever this Conſtitution was Violated, or Diſregarded, the Lords and Commons often-times Truſted and Admitted, and even *Invited* to the Government, ſuch Promiſing and Contracting Princes, *preferable* to others, who, by Proximity of Blood, ſtood nearer; as appears from the ſubſequent Examples of *William Rufus*, and *Henry* I. who were preferred to their Eldeſt Brother, *Robert* Duke of *Normandy*; and in the Inſtances of King *Stephen*, and King *Henry* II. who were preferred to *Maud* the Empreſs; and of King *John*, who was preferred to his Nephew *Arthur*, Son of his Elder Brother *Jeffrey* Earl of *Anjou*; and of *Henry* Duke of *Lancaſter*, afterwards King *Henry* IV. who was preferred to the Houſe of *York*.

SECT. VI.

WILLIAM RUFUS, Second Son of *William* I. as ſoon as his Father, in his laſt Sickneſs at *Rouen*, in *Normandy*, Expired, left him Unburied, and haſtened into *England*, and offering, and engaging, to Reſtore all Men to their Rights, and to Govern according to the Antient Conſtitution, the Lords and Commons, upon theſe Terms and Conditions, and in order to Diſappoint and Defeat his elder Brother *Robert*'s Pretences of Right by Conqueſt, or by Hereditary Right, Truſted *William Rufus*, and placed him in the Throne, preferable to his Elder Brother *Robert*'s Claims.

The Two Eſtates of Lords and Commons, proceeded in this Caſe, doubtleſs, upon theſe Principles, *That a Title to the Government by* **Conqueſt,** *was not to be endured*: And next, *That although King* William *the Conqueror, had entered into the* **Original Contract** *with his People, and thereby Gained a Limitted Hereditary Right, deſcendible to the Heirs of his Body, according to the Conſtitution, yet he had afterwards broken that Contract, and Abdicated, by Exerciſing Arbitrary Power; and that, therefore,* Robert *his Eldeſt Son, could not Derive any Hereditary Right from a King, that had none himſelf*: However, this King, *William Rufus*, in ſome few Years, forgetting his *Contract*, which was the very *Seal of his Sovereignty*, began to Govern Arbitrarily; but the **Wound** he Received from an Arrow, Shot (as was pretended) at a Buck in the *New Foreſt*, put a *Period* to his Boiſterous and Irregular Government.

SECT. VII.

HENRY I. (the Third Son of *William*, vulgarly called *the Conqueror*) being in *England*, and Engaging in the like Contract, as his Brother *William Rufus* had before done, was, by the Lords and Commons, on Condition of his Performance thereof, Truſted and Advanced to the Government, ſtill preferable to his Eldeſt Brother *Robert*, who was yet Living; but with this Difference, That at his Coronation in the Year 1100, the Main *Articles of the Conſtitution* were, upon the Lords and Com-

Commons demanding it, Reduced into Writing, in the Form of a **Charter**; and a Duplicate thereof, was put under the Great Seal, and ſent to each Sheriff in *England*, one of which eſcaped the ſucceeding Diſorders, and came to the Hands of *Stephen Langton*, Archbiſhop of *Canterbury*; and from that *Charter*, were taken and framed, the Heads of the Charter, which, 113 Years after, was ſettled and adjuſted between King *John*, and the Lords and Commons, in a Parliament Aſſembled and Held at **Running Mead** (ſince called *Charter-Mead*) in the ſame Manner as this Charter of King *Henry* I. had been framed and taken from the Laws of King *Edward* the Confeſſor, as thoſe again had been before taken from the Laws of King *Alfred*, and ſo Running back to the **Origination** of this Government.

The Reaſon of putting this *Charter*, containing the Antient Laws, under Seal, was, *Becauſe any Writing, under the Great Seal of* England, *was the Higheſt and moſt* Concluſive Evidence *of the Truth of the Matters therein ſpecified, that could poſſibly be produced and Exhibited by the Subject againſt the Crown.*

This King, (*Henry* I.) to ſtrengthen his Title, Married *Matilda*, the Daughter of *Malcolme* King of *Scotland*, by *Margaret*, who was Siſter of *Edgar Atheling*, and Daughter of *Edward* Son of *Edmond* Ironſide, King of *England*; in which Queen *Matilda*, all the Claims, proceeding from the Antient Line of the *Britiſh* and *Saxon* Kings, were (as the *Engliſh* Inſiſted) **United.**

It is obſervable, how Important the **Poſſeſſion** of the Government is; for, notwithſtanding the Perſonal Merit, and the Great Fame, which the Eldeſt Brother *Robert* had, in the Holy Wars, Acquired, and eſpecially in the Siege and Taking of *Jeruſalem*; his younger Brothers, *William Rufus*, and *Henry* I. found **Means** to defeat all his Pretenſions, and at laſt to reduce him to a Priſon, in which his Claims, as well as his Life, Expired.

SECT.

SECT. VIII.

UPON the Death of King *Henry* I. the Two Firſt Princes of the Royal Family, were *Stephen*, Earl of *Bologn* and *Mortaigne*, Grandſon of *William* the Conqueror, by his Daughter *Adela*; and *Maud*, the Empreſs, Grand-Daughter of the ſame *William* the Conqueror, by his Third Son, the laſt King *Henry* I. whoſe Title, under the *Norman*, had the Addition of her being Deſcended of the *Britiſh* and *Saxon*, Royal Family; but ſhe being a Woman, and in *France*, and *Stephen* Engaging to preſerve inviolably the Conſtitution, and to Govern according to the Rules thereby Statuted, he was, by the Lords and Commons, *Truſted*; and (preferable to *Maud*) Admitted to the Government.

In ſome few Years, the People growing Wanton, and (as it were) ſurfeited with Freedom and Liberty, *Maud* Obſerved it, and Claiming the Government, as Daughter and Heir of King *Henry* I. invaded *England*, and, with ſmall Forces, at Firſt, made War upon King *Stephen*; in the Viciſſitudes whereof, may be ſeen an extraordinary Event, produced merely by the Energy and Influence of this Conſtitution; for *Maud* had at Firſt ſuch Succeſs, that in a Battle fought at *Lincoln*, ſhe took King *Stephen*, and ſent him a Priſoner to *Briſtol*, and there put him in Irons; and now, having beaten down all Oppoſition, and apprehending herſelf ſole Monarch of *England*, and her Power to be Abſolute and Unlimitted, ſhe Aſſumed an Air, that was **Arbitrary**, and Diſcovered her Intentions, not to Regard any of the Articles, or Contracts, or Stipulations of this Conſtitution, in which King *Stephen*, or her Father, King *Henry* I. had Engaged, but rather to Declare them null and void; Affirming, *That the* **Poſition** or **Claim** *of the People*; *That the Regal Office*, *Dignity*, *or Power*, *was one of the* Three Eſtates *Inſtituted by this Conſtitution*, *was a Deteſtable*, *and Deteſted* **Poſition**: Upon which Diſcovery, the Lords and Commons, by whoſe Adherence and Power, ſhe was raiſed to that Station; did, in order to convince her, Aſſert the Conſtitution, and Abdicating her, who had Abdicated the Conſtitution, they returned to the Intereſt of the Priſoner (King *Stephen*) and Reduced the **Pretending** *Maud*, to the poor Shift, of Entring even into a Coffin; and to paſs as a Dead Corps, through an Army in King *Stephen*'s Intereſt,

Intereſt, to eſcape being herſelf made a *Priſoner*: The Reſult of all was; *That ſhe, having rendered herſelf Incapable of the Government, by Giving an Umbrage of an* **Arbitrary** *Diſpoſition, was Obliged to ſtand by, and ſee the* **Conſtitution** *Exemplified, in an Act of Parliament*; to which King *Stephen* gave the Royal Aſſent, whereby ſhe, the pretending *Maud*, was Rejected and *Excluded*, King *Stephen* Reſtored for his Life, to the Government, and her Son *Henry*, called King *Henry* the Second, appointed to ſucceed King *Stephen*: All which, ſhe lived to ſee Executed, and to find herſelf, for ſlighting the People's Rights, and this Conſtitution, tied down to a Subject's Condition. This Event being Remarkable, is here fitly Remembered, becauſe a bare Diſcovery of *Maud*'s Intention, to break the Conſtitution, rendered her unfit to Govern, and produced, or occaſioned, the Paſſing of a Bill of Excluſion; and thus was ſhe left to Reflect on, and Reproach thoſe Paraſites, by whoſe Treacherous Advice, her Hopes, and even her Poſſeſſion, of an Earthly Diadem, were Removed, Defeated, and Diſappointed.

SECT. IX.

IN the Reign of King *Henry* II. there paſſed little Remarkable, relating to the Conſtitution, ſave ſome Broils between the Crown, and the *Roman* Biſhop, for the **Supremacy**; but, nevertheleſs, many Abuſes, in Exacting Monies, crept into the Adminiſtration, tending to Enervate that Grand Article, whereby the Power of Impoſing Taxes, and Levying Money, was Reſerved ſolely to the Parliament.

It was, however, a particular *Felicity* to this King, that he Married his Eldeſt Daughter *Maud*, to *Henry*, Surnamed the *Lyon*, Duke of *Saxony*, by whom ſhe had Iſſue, *William*, her Third Son, born at *Wincheſter*, from whom are Deſcended the Dukes of *Brunſwick* and *Lunenburgh*; which Family, as an Evidence of their Affection to *England*, bare the ſame Arms as our Firſt Kings of the *Norman* Race bare, *viz.* Two Lyons, Or, Paſſant; and to this Felicity, was added a Second Marriage between a Deſcendant of this Line, and a Grand-daughter of *England*, Namely, the Princeſs *Sophia*, one of the Daughters of *Elizabeth*, Queen of *Bohemia*, who was Daughter of King

James I. and Sister of King *Charles* I. which occasioned the Calling to the Government of *Great Britain*, the Illustrious GEORGE, Elector of *Brunswick*, Son and Heir of the said Princess *Sophia*, now King of *Great Britain*.

In the short Reign of King *Richard* I. there passed nothing remarkable, in Relation to the Constitution.

BREACHES

BREACHES IN THE REIGN OF KING JOHN.

CHAP. IV.

SECT. I.

KING *Richard* I. Receiving his Death from a Bearded Arrow, in the Siege of the Caſtle of *Chaluz*, in *Normandy*, and leaving no Iſſue, his Youngeſt Brother, *John*, being there in the Army, at his Demiſe, procured *Hubert* Archbiſhop of *Canterbury*, and *William Strongbow*, Lord *Marſhal*, Earl of *Pembroke*, to haſten over from thence to *England*, and there, together with *Geoffry Fitzpeter*, Chief Juſtice, for him, and on his Behalf, to Enter into Engagements and Promiſes, to *Reſtore* all Men to their Rights, and to Govern, according to the Conſtitution, if the Lords and Commons would admit, or call him to the

the *Government*; And upon that expreſs Condition, the Lords and Commons Truſted him; and when he came, Six Months after, into *England*, they, upon his Contract and Oath, to perform that Engagement, placed him in the Throne, preferable to his Nephew *Arthur*, Son of his Elder Brother *Jeffrey* Earl of *Anjou*, and afterwards Duke of *Britain*; and alſo preferable to *Eleanor*, Siſter of the ſaid *Arthur*, whom this King *John* Impriſoned in the Caſtle of *Briſtol*, where ſhe lived 'till the Year 1241, which reached to the 25th Year of King *Henry* III. and there died a Priſoner.

King *John* had, before his Coming for *England*, ſeized on *Normandy*, to which he had no good Title, and Thirſted after *Anjou*, and other Territories, which were rightfully poſſeſſed by his Nephew *Arthur*, a Young Prince of the Age of Thirteen Years. This put King *John* upon Summoning the *Engliſh* Nobility and Gentry, to Attend and Aſſiſt him, in his *French* Expeditions; but the Service being not Legal, they declined the Attendance.

SECT. II.

IN this Place it is proper to obſerve, what were thoſe *Grounds* and *Reaſons*, which produced the Wars, commonly called, the *Barons Wars*; and which had been Breeding and Hatching, the Space of 150 Years, commencing at the Time of the Conqueſt, in the Year 1066; and for this Purpoſe, it cannot be omitted to obſerve, That when *William* the *Conqueror*, Acceded to the Crown, he Added *Normandy* to *England*, and after that Time, *Aquitain*, and other Territories in *France*, Devolved by Marriages, *&c.* to the King of *England*; for which Reaſons, it became *neceſſary* to our Kings, ſometimes, to Viſit thoſe Countries; and in order to ſecure their Intereſt in the principal Men there, our Kings were, in a Manner, obliged to *Introduce* many of them into the Miniſtry, and beſt Offices, and into the moſt Important Management of their *Engliſh* Government, which bred in the *Engliſh*, great Diſcontents.

Thoſe Dominions being held of the Crown of *France*, by Homage, *&c.* many Broils happened between the Two Kings about the Tenure, and Inveſtiture, and doing Homage, *&c.* And the ſame lying in the Continent near *Paris*, the *French* Kings had the Advantage of making eaſy and ſudden Inroads

and

and *Seizures*, on Pretences of Defaults, for not performing Services, *&c.*

Our Kings were, by these *French* Wars, continually Involved in Troubles, about Raising Men and Money; and in their Absence, the People were harrassed by their Viceroys.

The Governments of each Country, greatly differed; for our Kings did, in their *French* Dominions, Govern by **Edicts** of their own *Arbitrary* making; and for that Reason, they endeavoured to Administer (and expected their *English* Subjects to Obey, without Reserve, their Imperial Orders) *al a mode du France.*

The Kings themselves, often returned Home **Displeased**, for not Receiving, Supplies of Men and Money, suitable to their Wants and Expectations; and when their Parliaments *Declined* giving Aids, the Kings sometimes assumed an Arbitrary Power to furnish themselves by **Imposing** Taxes, without Act of Parliament.

SECT. III.

THIS being the State of the Causes, an *Account* of their Effects, will appear from the Sequel.

King *John* being Displeased with the *English*, for not Attending him into *France*, and Charging on them, his Losses and Disappointments, he, from thenceforth, meditated how he might, by his Regal Authority (without a Grant thereof in Parliament) **Impose Taxes**, and Raise Money, to supply his Occasions; and accordingly, in the Fourth Year of his Reign, 1203, he, by his sole Authority, Imposed a great Tax, and Exacted and Raised it, with Rigour.

This Tax being an Act of *Arbitrary* Power, by which the Constitution, and the Fundamental Form of Government, was openly *Violated*, and all Mens Properties subjected, to the King's Will and Pleasure; *Jeffrey* Archbishop of *York* (tho' he was the King's illegitimate Brother) was the first Man, by whom that Regal Power to *Impose Taxes*, was *Questioned*, and in order to put that Question in Issue, the Levying of that Tax was, by him, strenuously obstructed, and, in Imitation of him, the **Disturb-**

ance and Oppoſition became General; however, for the preſent, the King Executed this Law, of his own Making, and the Archbiſhop, in fear of Revenge, withdrew into Parts beyond the Seas.

This open Aſſumption of King *John*, was the Firſt Direct Cauſe, that put into Motion, and blew up into a Flame, thoſe Struggles and Wars, about the Conſtitution, between the Crown and the People (then called the Barons Wars) which, by the Firmneſs of the Barons, who headed the People, continued with great Bloodſhed, and variable Succeſs (notwithſtanding ſome Intermiſſions) for the Space of above 100 Years, as before is mentioned, until that famous Statute called **Magna Charta**, at firſt conceded to by King *John*, in which the Conſtitution, and the **Antient** Form of Government in this Nation, are Deſcribed, was at laſt Vindicated and Eſtabliſhed; in which Inteſtine Controverſies (that were Renewed in ſeveral Kings Reigns) was Spilt the Blood of above 100,000 Men, without reckoning infinite other Calamities.

SECT. IV.

THIS *Grand Queſtion* between King *John* and his People, *Whether his Majeſty could, by his Regal Power,* **Impoſe Taxes**, *and Levy Money, without a Grant thereof in Parliament*? was, in the Event Determined in Favour of this Conſtitution. *However*, pending thoſe Proceedings; and before the Deciſion of the Queſtion was Compleated, the Arguments on both Sides were to this Effect:

The King Argued, *That this* Legiſlative Power *was Inherent in, and inſeparable from, his Regal Government, and that the Supreme Governor could not, by any* **Contract**, *made by King* John, *or by his Coronation Oath, be Diveſted of that Authority.*

But the Barons and Commonalty, on their Part, Denied that the Supreme Governor or King had, or was Inveſted with, any ſuch **power** or Authority, and Argued, *That ſuch an* **Arbitrary**, *or Legiſlative Power in the Monarch, was Inconſiſtent with the Rights, and Hereditary Privileges of the People, and was therefore Denied by the Conſtitution*; becauſe, *if the King could feed and ſupport his Regal Power, by Impoſing* Taxes, *and*

and Levying what Money he pleaſed, all their other Rights Privileges, and Claims of Liberty and Property, would be found mere Vapours, and muſt neceſſarily Depend on the King's Will and Pleaſure; for a **Power** *which could ſupport itſelf, with Monies and Treaſures, could not be Bounded or Limitted, by any other Power.*

SECT. V.

AT this Time, the famous Diſtinction between the King's *Natural* Perſon, and his *Political* Capacity, or Adminiſtration of Government, Guided the Barons and Commons in their Demeanor towards King *John*, and his Succeſſor King *Henry* III. as appears from many Inſtances, which in this Controverſy occurr'd; for the Barons meaning nothing more, than to meaſure the Government by the Standard of the Conſtitution, and to Reduce it to the Original Form, which had Eſtabliſhed this Fundamental Article, *That no* **Taxes** *ſhould be Impoſed, or Monies Raiſed, but by a Grant thereof in Parliament*; they endeavoured to bring King *John*, to that Senſe of his Regal Authority, by the **Means** only of Seizing his Caſtles, Lands and Revenues, without intending any Hurt to his Perſon.

SECT. VI.

THIS being the Caſe, and the Controverſy obvious and important, the Difficulty then was, how to Liquidate between the King and the People, What really was the **Conſtitution**, and thoſe Prerogatives which, of Right, belong'd to the Crown, and thoſe Hereditary Powers and Privileges which, of Right, belong'd to the People; for in thoſe Times, the People were unlearned.

The General Facts, about this Struggle, were thus Tranſacted.

The Barons and People being Senſible and well Apprized of this *Fiery King's Cruel Diſpoſition*, endured his **Arbitrary** Impoſitions, for about the Space of 15 Years, without any forcible **Diſturbance** or Oppoſition; in which Space, he repeated his **Arbitrary** Acts of Power, in *Impoſing Taxes*, no leſs than Seven Times; but the People being at laſt Impoveriſhed, and inſupportably Oppreſſed, grew generally Mutinous.

The

The King, who, with Money Illegally Levyed upon the *Engliſh*, was Enabled to maintain, in *England*, Foreign Mercenaries, Marched, with that Army, to make War upon the Barons; but, in his March, was prevailed on, by *Stephen Langton*, Archbiſhop of *Canterbury*, to forbear, and call a Parliament, which was Convened, and Aſſembled at Saint *Paul's* Church *London*, in the Fifteenth Year of this King's Reign.

At this Parliament, the Archbiſhop produced and ſhewed to the Lords and Commons, King *Henry* the Firſt's Charter before mentioned; by which appeared, what were the Peoples Rights, Liberties, and Hereditary Powers and Privileges.

The Barons and Commons, at this Diſcovery, Exceedingly rejoiced, Diſpatched the Buſineſs before them, and Managed it ſo, as to be ſoon Diſmiſſed, that they might, in their Receſs, Digeſt their Rights, and take ſuch Meaſures as, by them, the Fundamental Form of Government and the Conſtitution, might be regularly and effectually Claimed, Aſſerted, and Re-eſtabliſhed.

SECT. VII.

THE King was, by his *French* Subjects, called into *Normandy*, for their Defence and Preſervation, where, for Want of his *Engliſh* Armies, he was ſurrounded with Misfortunes, and, in Effect, loſt *Normandy*.

The Barons, taking Advantage of the King's Abſence, met at St. *Edmond's-Bury*, and Aſſociated, to take modeſt Meaſures, whereby the *Conſtitution*, and their Antient Rights, might be Regained, and, upon Denial, to uſe Means for Aſſerting and Recovering them.

The King returned from *France*, Affected with his Diſappointment, and fill'd with Reſentment; but to avoid the Conſequences of his Anger, the Barons and People, in a Body, attended his Majeſty, and petitioned him to Reſtore their Liberties, and the Rights of the Nation, contain'd in King *Henry* the Firſt's Charter; to which his Majeſty made a mild Return, Promiſing, *To conſider of it, as a Matter of Importance, and,*

at

at the End of Three Months, to Give them his Anſwer at Oxford.

The Barons and People being Aſſured, That the King would, by Fair Means, concede to nothing, Aſſembled at *Stamford*, and Marched to *Brackley*, in their Journey towards *Oxford*, to Receive the King's Anſwer, at the Time appointed; but, at *Brackley*, they met a *Meſſage* from the King, to know, *What were thoſe Rights and Privileges they Demanded?* in Anſwer to which, the Barons ſent a **Schedule**, or Liſt of their Claims, the Principal whereof was, *That no Taxes or Money ſhould be Impoſed or Levied, unleſs the ſame were Granted in Parliament*; but, upon Reading it, the King flew into a Paſſion, demanding, *And why did not the Barons, together with theſe Demands, Demand my Kingdom*; and Swore, *That he would never* Grant *thoſe Liberties, whereby he himſelf ſhould become a* Servant.

The Barons being Enraged at this Anſwer, Reſolved not to touch the King's Perſon, which was unqueſtionably many times in their Power; but to **Seize** his Caſtles, Lands, and Revenues, and by thoſe **Means**, induce him to do Juſtice; and accordingly they entered *Bedford*, and, upon the Citizens Invitation, took Poſſeſſion of *London*, and animating each other, they ſummoned all others, to join and aſſiſt them, either to recover their Rights, or *periſh in the Attempt*.

SECT. VIII.

THE King being, in a Manner, forſaken of his People, *i. e.* of his Strength and Power; but pretending *Peace*, when he had in his Heart mortal *War*, conſented to hold, and did hold, a Parliament at **Running Mead**, between *Windſor* and *Staines*, where the King and his Adherents, appeared to be an Inconſiderable Number; but the Lords and Commons filled the Country.

At this Parliament were Adjuſted, Settled, and Declared, the Antient Conſtitutions, Laws, and Liberties of the Kingdom; which were reduced into Writing, and Exemplified in the Form of a **Charter**, to which, and to many Duplicates of it, the King cauſed the Great *Seal* of *England*, to be *Affixed*, and ſent them to the Sheriffs, ordering them to be Publiſhed; one of

 which

which *Charters* in *Latin*, having the Great Seal, whole and unbroken, appending, and being written upon Parchment, in a fair Hand, hath Eſcaped all Endeavours to ſuppreſs it, and is ſtill Extant in the *Cottonian Library*; a true Copy whereof, is placed at the End of this Reign.

It is material, for the better Underſtanding of the future Proceedings, to take Notice of ſome of the Lords Spiritual and Temporal, and Commons, named in this *Charter*, by whoſe Advice the ſame is mentioned to be made; There are Nine Biſhops named, amongſt whom are *Stephen* (*Langton*) Archbiſhop of *Canterbury*; *Henry*, Archbiſhop of *Dublin*; and *Peter de Rupibus* Biſhop of *Wincheſter*: Four Earls, amongſt whom was *William* (*Strongbow*) the Marſhal, Earl of *Pembroke*; and many Commoners, amongſt whom were *Alan* of *Galway*, Conſtable of *Scotland*; and *Hubert de Burgo*, Steward of *Poictou*.

SECT. IX.

The Principal Articles of this Charter were;

That no Eſcuage or Aids, (i. e. Taxes) *ſhould be Impoſed in the Land, but by the Common Council of the Kingdom* (i. e. the Parliament.)

That to have, or hold the Common Council of the Kingdom, to aſſeſs Aids and Taxes, for carrying on Wars; the King ſhould, by Letters under his Seal (now called Writs) *ſummon the Biſhops, Abbots, Earls, and Barons; and, moreover, ſhould in general ſummon all thoſe, who held of the Crown in Chief*; (which were in Effect all the conſiderable Freeholders and Commoners of *England*) *at a certain Place, and at a certain Day*, viz. *at the End of Forty Days at the leaſt, and ſhould, in all ſuch Summons, expreſs the Cauſe of that Summons; and that the Buſineſs ſhould proceed, according to the Advice of ſuch, as ſhould be preſent, although all that were ſummoned, did not come.*

That upon the Death of the King's Debtor, the Sheriff ſhould Inventory his Goods, and, after Payment of the King's Debt, the Reſidue ſhould be left to the Executors, to perform the Deceaſed's Will; and if nothing were due to the King, all the Goods

Goods ſhould be left to the Deceaſed, ſaving to his Wife and Children their reaſonable Parts.

That an Inteſtate's Goods ſhould be Diſtributed by his next Friends.

That no Man's Corn or Goods, ſhould be taken by the King's Officer, unleſs he pay for the ſame inſtantly, in ready Money, or can get Credit of the Seller.

That no Man's Horſes or Carts, ſhould be taken for Carriage, or his Woods for Caſtles, or other Occaſions, without the Owner's Leave.

That no Man ſhould be Arreſted, Impriſoned, Diſſeized, Outlawed, Exiled, or in any Manner Deſtroyed, but by the Judgment of his Peers, or by the Law of the Land.

That Right or Juſtice ſhould not be Sold, Denied, or Delayed to any Man.

That Merchants ſhould have free Liberty and Safety to go out, and come into England, *as well by Land, as by Water, to Buy and Sell without any Evil Tolls.*

That any Man might ſafely go out, and return into the Kingdom by Land and by Water.

With ſome Reſtrictions in Time of War.

That all Foreigners that came to Annoy the Kingdom, ſhould be forthwith Removed.

That for the Security of the Peace, and of the Liberties between the King and the Kingdom, againſt any Breach thereof by the King, or his Miniſters, the Barons and Commonalty ſhould, upon Refuſal to Redreſs it, Diſtreſs and Grieve the King, by Taking his Caſtles, Lands, and Poſſeſſions, till the ſame ſhould be Redreſſed (ſaving the Perſons of the King, Queen, and their Children) and that the Lords ſhould appoint Twenty-five of their Order, who ſhould have Power and Authority, to take Care and ſee theſe Articles Performed and Executed.

SECT.

SECT. X.

BUT, notwithſtanding all this Solemnity, the King was, by his Foreign Mercenary Officers (whom he made his Familiars) Upbraided, *That by this Charter he had Conceded, to make himſelf a King, without a Kingdom, a Lord, without Dominions, a Subject to his Subjects*; And therefore his Majeſty pretended, *That what he had done, was Extorted by Force and Violence, and for that Reaſon, he Reſolved to undo it all* : The King, for this End, retired to the *Iſle of Wight*, and there Living *Incognito*, he meditated and contrived a **Conſpiracy** of the moſt Heinous and Black Complexion, *viz.* To procure from *France*, and from *Gaſcony*, *Poictou*, *Flanders*, and *Brabant*, an **Army** of Foreigners, with whom he might Invade and **Deſtroy** his own People, Contracting with the Commanders and Undertakers, to **Root** out the *Engliſh*, and **Plant** in their Room, thoſe Strangers.

This Conſpiracy ſo far took Effect, that great Multitudes of Deſperate Soldiers, under Deſperate Commanders, arrived ſafely at *Dover*, where King *John* put himſelf at the Head of them; but the greateſt **Army**, being Compos'd of *Flemings*, amounting to 40,000, was Embarked under the Leading of *Hugh de Boves*, on Board a numerous Fleet, and was actually Sailing from *Flanders*, to Land, and join the King at *Dover*.

But here Providence, in Favour of poor *England*, Interpoſed, and wrote upon this Infernal Deſign, **Diſappointment**, and by a Blaſt, or Storm, ſent forth in the very Article of Neceſſity, **Buried** this Wicked Crew of **Foreign Forces** in the Sea, between *Dover* and *Calais*. I ſay, it was in the very *Article of Danger*; for if that great Army had ſafely Landed, King *John*, in all human Probability, had **Deſtroyed** his *Engliſh* Subjects, and given to Strangers, their Land and Inheritance; for with ſuch Part only, of thoſe Foreigners, as did ſafely Arrive, the King became Maſter of the Field, and made Cruel and Terrible **War** upon his own People, Deſtroying them with Fire and Sword (inſomuch, that the Barons, who were Aſſembled and held *London*, were not able to ſtir out to Reſcue, or Save their Fellow Subjects).

SECT.

SECT. XI.

IN this Place the Barons Behaviour, to King *John*'s Perſon, ought to be remembered; for the King, with his Foreign Army, Beſieging *Rocheſter Caſtle*, then Commanded by the Lord *William de Albinet*, and other Barons, his Majeſty, in Company with his Foreign General *Savaricus*, a Nobleman of *Flanders*, going too near in Viewing, where the Caſtle was Weakeſt, came within the Power of an Archer, Baron *Albinet*'s beſt Markſman, who eſpied and knew him, and asked his Lord, *Whether he ſhould kill the King, with the Dart then in his Hand? No, No*, ſays Lord *Albinet*; The Archer Reply'd, *Why? He is your Bloody Enemy, and if it were your Caſe, he would not ſpare you*: To which *Albinet* ſaid, *God ſhall diſpoſe of that, not he.*

The Garriſon being Starved, for Want of Proviſions, ſurrendered at Diſcretion, and King *John* was made Acquainted, how his Life had been in the Power of his Enemies, and how he had been ſpared; and yet the **Inhuman** King ordered the Barons to be immediately hang'd up; which had been Executed, had not *Savaricus* obſtructed it, by inſiſting, *That no Man could Anſwer for the Chances of War; and, that if he, or any other Nobleman, ſhould become a Priſoner, this Example would teach the Barons how to diſpoſe of them; and that no Man would ſerve his Majeſty upon thoſe Terms*: However, the King gratified his **Cruelty**, by hanging up all the Soldiers, amongſt whom, the *very Archer* (who ſpared him to have that Power and Opportunity) **was hanged.**

From hence, it appears, That the Barons, at that Time, made a Diſtinction between the King's natural Perſon, and his Political Capacity, or the Adminiſtration of his Government, intending only to Introduce him (without hurting his Perſon) into the Way of Juſtice and Humanity.

SECT. XII.

THE Barons and Commons now Determined the Controverſy, *viz.* That King *John* (whom they had, upon the Conditions ſtipulated between them, not only placed in the Throne, preferable to his Nephew *Arthur*, but had lately Renewed with him the Original Contract) had, with a *Foreign Army*, Invaded *England*, and made a Cruel **War** upon his own People, endeavouring, not only to extirpate their Hereditary Rights and Liberties, but even to **Root** out their Families, and give their Inheritance to Strangers, had broken the Original Contract, Rejected his People, **Diſſolved** his Government, and, conſequently, Vacated the Throne: They therefore Reſolved **to have done** with King *John*, and to fill the Throne with ſome Prince, that would accept the Government upon the Terms of the Conſtitution.

In Purſuance of which Reſolution, they **Invited** *Lewis* the Dauphin of *France*, who Accepted the Offer, and Contracted with the Barons and Commonalty, to bring over Forces, and to Reſcue them, from under Oppreſſion, and from their Fear of Extirpation, and upon the Terms propoſed, to accept the Government; and, accordingly, *Lewis*, with competent Forces, Arrived, and Joining the Barons, they became Maſters of the Field.

King *John*, upon this Revolution, Retired with his Mercenaries (who had, in their Minds, Shared *England*) and Fled from Place to Place, 'till at laſt, Retiring in Deſpair, through Part of *Northamptonſhire*, *Cambridgeſhire*, and *Norfolk*, towards *Lincolnſhire*, he left **Dreadful Marks** of a moſt Barbarous Enemy, by *Burning* and Deſtroying the Abbies or Monaſteries of *Peterborough* and *Croyland*, and their Stacks of Corn, and even the Villages and Hedges of his own People, until he came to paſs the Waſhes, between *Lynn* and *Boſton*; but in that Place, **Vengeance** overtook him, and was Executed upon him; for after the ſame Manner, as his Foreign Army, under *Hugh de Boves*, was, by a Sudden and Raging **Blaſt**, or Tempeſt, in the Sea between *Dover* and *Calais*, **Overwhelmed**,

Whelmed, and ſunk into the Boſom of the Deep; ſo here the *Tide* (not unlike the *Red Sea*) unexpectedly Returned, and Surprized, and Swallowed up, all his Carriages and Treaſures: Whereupon Grief, or Poiſon, ſoon after brought his Tyrannical Life, and Power, to a *Period*: Remarkably Miſerable! for it is Queſtioned in the Hiſtories, whether this King died of Grief, or Poiſon; but when it is remembered, how this King, at the Head of his Foreigners, had, ſome few Days before, unmercifully Burnt and Deſtroyed the Houſes, Barns, and Stacks of Corn, of his own Subjects, not ſparing the Abbies, or the Barns and Stacks of Corn of the Abbot of *Croyland*, it is more than Probable, that the *Monks* of *Swinſhead Abbey*, Treated him as a Common Enemy, and paid him the Compliment of Poiſon, in Return for his *Cruel Burnings*.

That Man muſt be wilfully Inconſiderate, who, from theſe Providential Events, does not ſee and perceive theſe plain Inferences.

I. *That the Omnipotent Governor and Judge, did look down, and ſee King* John's *Dark, Ungrateful and Inhuman Intentions, and* Diſapproved *them.*

II. *That the ſame Supreme Being, did likewiſe ſee and conſider the Cauſe of the Lords and Commons, and* Approved *it; for the Cauſe of the one, was, in a Miraculous Manner,* Confounded, *and the other* Vindicated, *and, in the End,* Succeeded.

III. *That from theſe Vigorous Struggles and Efforts, and from the Succeſſes in this Cauſe, this Nation's* Freedom, *Liberty and Happineſs, were, in a great Meaſure, Derived.*

It is Material to Obſerve, That by the Act of Parliament of 12 *W.* III. *Cap.* 7. for the Preſerving of the *Cottonian Library*; It is recited, *That Sir* Robert Cotton *had Collected the moſt Uſeful Manuſcripts and* Records; *and that the ſame were of great Uſe and Service, for the* Knowledge *and Preſervation of this* Conſtitution, *both in Church and State, and were generally eſteemed, the beſt Collection of its kind, then any where* Extant:

This

This being ſo, it may, with ſome Aſſurance, be Aſſerted, *That this Charter of King* John, *made at* Running-Mead, *is the moſt Authentick Record, which is now* Extant, *evidencing this Conſtitution, it being that eminent and compleat* Charter, *to which the Schedule, or* Capitula *of Articles, which, Biſhop* Burnet's *Hiſtory relates, were found in Archbiſhop* Laud's *Cloſet or Cabinet, and which Mr.* Johnſon, *commonly called* Julyan Johnſon, *has Printed, in his Works,* Verbatim; *were but Preparatory.* For which Reaſon we ſhall inſert it here at large.

King John's Magna Charta.

[NOTE, *Thoſe Paragraphs Printed in a* different Character, *are the Clauſes of this* Charter, *which were Artfully Omitted out of King* Henry III's Magna Charta.]

§. I. JOHANNES, Dei gratia, Rex *Angliæ*, Dominus *Hiberniæ*, Dux *Normanniæ*, *Aquitaniæ*, & Comes *Andegaviæ*; Archiepiſcopis, Abbatibus, Comitibus, Baronibus, Juſticiariis, Foreſtariis, Vicecomitibus, Prepoſitis, Miniſtris, & omnibus Ballivis, & Fidelibus ſuis, ſalutem: Sciatis, Nos, intuitu Dei, & pro Salute Anime noſtre, & omnium Anteceſſorum, & Heredum noſtrorum, ad Honorem Dei, & Exaltationem Sancte Eccleſie, & Emendationem Regni noſtri, *per Conſilium* venerabilium Patrum noſtrorum *Stephani Cantuarienſis* Archiepiſcopi,

JOHN, *by the Grace of God, King of* England, &c. *to the Arch-Biſhops, Biſhops, Abbots, Earls, Barons, Juſtices, Foreſters, Sheriffs, Provoſts, Miniſters, and all his Bailiffs, and his Lieges, Greeting*: Know ye, *That we, God beholding us, and for the Health of our Soul, and the Souls of all our Anceſtors, and of our Heirs, and for the Honour of God, and the Advancement of Holy Church, and for the Amendment of our Government, by* the Advice *of our Honoured Fathers,* Stephen *Archbiſhop of* Canterbury, *Primate of all* England, *and Cardinal*

copi, totius *Anglie* Primatis, & ſancte *Romane* Eccleſie Cardinalis; *Henrici Dublin'* Archiepiſcopi; *Willielmi London'*, *Petri Winton'*, *Joſcelini Bathon'*, & *Glaſton'*, *Hugonis Lincolnienſis*, *Walteri Wigornie*, *Willielmi Coventrie*, & *Benedicti Roffenſis* Epiſcoporum, Magiſtri *Pandulfi* Domini Pape Sub-diaconi, & Familiaris Fratris *Eymerici*, Magiſtri Militie Templi, in *Anglia*; & Nobilium Virorum *Willielmi* Mareſcalli Comitis *Penbrok*, *Willielmi* Comitis *Sarum*, *Willielmi* Comitis *Warren*, *Willielmi* Comitis *Arundell*, *Alani* de *Galweya* Conſtabularii *Scotie*, *Warini Filii-Geroldi*, *Petri Filii-Hereberti*, *Huberti* de *Burgo* Seneſcalli *Pictavie*, *Hugonis Nevill*, *Matthei Filii-Hereberti*, *Thome Baſſett*, *Alani Baſſett*, *Philippi de Albin' Roberti de Roppell*, *Johannis Mariſcalli*, *Johannis Filii-Hugonis*; *& aliorum Fidelium noſtrorum.*

dinal of Rome, Henry *Archbiſhop of* Dublin, William *Biſhop of* London, Peter *Biſhop of* Wincheſter, Jocelin, *Biſhop of* Bath, Hugh *Biſhop of* Lincoln, Walter *Biſhop of* Worceſter, William *Biſhop of* Cheſter, Benedict *Biſhop of* Rocheſter, *and Maſter* Pandulph *Sub-Deacon of our Lord the Pope, and of our Friend and Brother* Eymerick *Maſter of the Order of Knights Templars in* England; And by the Advice *of our Noblemen* William *Earl Marſhal, Earl of* Pembroke, William *Earl of* Saliſbury, William *Earl of* Warren, William *Earl of* Arundel, Alan *of* Galloway, *Conſtable of* Scotland, Warin Fitz-Gerard, Peter Fitz-Herbert, Hubert de Burgh, *Steward of* Poictou, Hugh Nevill, Matthew Fitz-Herbert, Thomas Baſſet, Alan Baſſet, Philip D'Aubenie, Robert de Ropellee, John Marſhal, *and* John Fitz-Hugh; *and by the Advice of our other faithful Commons.*

§. II. Imprimis Conceſſiſſe Deo, & hac preſenti Charta noſtra Confirmaſſe, pro nobis, & Heredibus noſtris, in perpetuum; Quod Anglicana Eccleſia Libera ſit, & habeat Jura ſua integra & Libertates ſuas illeſas; & ita Volumus obſervari, Quod apparet ex eo quod Libertatem Electionum que maxima & magis Neceſſaria reputatur Eccleſie *Anglicane*, mera & ſpontanea Voluntate, ante Diſcordiam

Have, in the firſt Place, Conceded (i. e. Agreed) *and Confirmed to God, by this our preſent Charter, for us, and for our Heirs for Ever; That the Church of* England *ſhall be free, and ſhall Enjoy all her Rights and Liberties unhurt; and ſo is our Will, it ſhall be obſerved, which appears, foraſmuch as we, before the Diſagreement between us, and our Barons, had Granted, of our mere and*

cordiam inter nos & Barones noſtros motam, Conceſſimus & Charta noſtra Confirmavimus; & eam optinuimus a Domino Papa *Innocentio* Tertio confirmari, quam & nos obſervabimus & ab Heredibus noſtris in perpetuum, bona fide volumus obſervari.

free Will, the Liberty of Elections, which was Reputed to be greatly neceſſary to the Church of England, *and had confirmed the ſame by our Charter; and moreover, had procured the ſame to be confirmed by our Lord* Pope Innocent *the Third, which both we will obſerve; and we Will, that the ſame be* Bona Fide, *obſerved by our Heirs for ever.*

§. III. Conceſſimus etiam omnibus liberis Hominibus Regni noſtri, pro nobis & Heredibus noſtris, in perpetuum, omnes Libertates ſubſcriptas, habendas & tenendas eis, & Heredibus ſuis, de nobis & Heredibus noſtris.

We have alſo Conceded (i. e. Agreed) *for us, and our Heirs, That all the Freemen of our Kingdom ſhall have and hold to them, and their Heirs, for Ever, of Us, and our Heirs, all the Liberties under written.*

§. IV. Si quis Comitum vel Baronum noſtrorum, ſive aliorum, tenentium de nobis in Capite per Servitium Militare, mortuus fuerit, & cum deceſſerit, Heres ſuus plene Etatis fuerit & Relevium debeat, habeat Hereditatem ſuam per antiquum Relevium; (ſcilicet) Heres vel Heredes Comitis de Baronia Comitis Integra, per Centum Libras: Heres vel Heredes Baronis de Baronia integra, per Centum Libras: Heres vel Heredes Militis de Feodo Militis Integro, per Centum Solidos ad plus, & qui minus debuerit, minus det, ſecundum antiquam Conſuetudinem Feodorum.

If any of our Earls, or our Barons, or others, that hold of us in Chief by Knight Service, ſhall die, and at the Time of his Death, his Heir ſhall be of full Age, and Relief be due, he ſhall have his Inheritance by the Antient Relief; (to wit) *the Heir, or Heirs, of an Earl, for an entire Earldom, C. Pounds, the Heir or Heirs of a Baron, for an entire Barony, C. Marks, the Heir, or Heirs, of a Knight, for a whole Knight's Fee, C. Shillings at moſt, and where leſs is due, leſs ſhall be paid, according to the Antient Cuſtoms of the ſeveral Tenures.*

§. V. Si autem Heres alicujus talium fuerit infra Etatem & fuerit in Cuſtodia, cum ad Etatem pervenerit, habeat Hereditatem ſuam ſine Relevio, & ſine Fine.

So alſo, if the Heirs of any ſuch ſhall be within Age, and in Ward, they ſhall have their Inheritance when they come of Age, without Relief, and without Fine.

§. VI. *The*

§. VI. Cuſtos Terre hujuſmodi Heredis, qui infra Etatem fuerit, non capiat de Terra Heredis, niſi rationabiles Exitus, & rationabiles Conſuetudines, & rationabilia Servicia, & hoc ſine Deſtructione & Vaſto Hominum vel Rerum.

The Guardian of the Land of ſuch Heirs as ſhall be within Age, ſhall not take any Thing out of the Land of the Heirs, but only the reaſonable Profits, reaſonable Cuſtoms, and reaſonable Services, and that without Deſtruction and Waſte of Men or Goods.

§. VII. Et ſi nos comiſerimus Cuſtodiam alicujus talis Terre Vice-comiti, vel alicui alio qui de Exitibus illius nobis reſpondere debeat, & ille Deſtructionem de Cuſtodia fecerit vel Vaſtum; nos ab illo capiemus Emendam, & Terra comittatur duobus legalibus & diſcretis Hominibus, de Feodo illo, qui de Exitibus reſpondeant nobis, vel ei cui eos Aſſignaverimus.

And if we ſhall commit the Cuſtody of any ſuch Land to a Sheriff, or any other who ought to anſwer to us the Profits thereof; and if he ſhall make Deſtruction or Waſte of that Wardſhip, we will require of him Amends, and the Land ſhall be committed to two Lawful and Diſcreet Men of that Fee, who ſhall anſwer for the Profits to us, or to him, to whom we ſhall Aſſign the ſame.

§. VIII. Et ſi dederimus vel vendiderimus alicui Cuſtodiam alicujus talis Terre, & ille Deſtructionem inde fecerit vel Vaſtum, amitttat ipſam Cuſtodiam, & tradatur duobus legalibus & diſcretis Hominibus de Feodo illo, qui ſimiliter nobis reſpondeant, ſicut predictum eſt.

And if we ſhall give, or ſell to any Perſon, the Cuſtody of any ſuch Land, and if he ſhall make Deſtruction or Waſte therein, he ſhall loſe the Cuſtody, and it ſhall be delivered to Two lawful and diſcreet Men of that Fee, who ſhall likewiſe anſwer to us, as is aboveſaid.

§. IX. Cuſtos autem, quamdiu Cuſtodiam Terre habuerit, ſuſtentet Domos, Parcos, Vivaria, Stagna, Molendina, &c. ad Terram illam pertinentia de Exitibus Terre ejuſdem, & reddat Heredi cum ad plenam Etatem pervenerit, Terram ſuam totam inſtauratam de Carrucis & Wainnagiis, ſecundum quod tempus Wainnagii exiget, & Exitus

So alſo, the Guardian, ſo long as he ſhall hold the Cuſtody of the Land, ſhall ſuſtain the Houſes, Parks, Ponds, Pools, Mills, and other Things, to that Land appertaining, out of the Profits of the ſame Land, and ſhall render to the Heir, when he ſhall come to full Age, all his Land, well ſtocked with Ploughs and Wains, according

to

Exitus Terre rationabiliter poterunt ſuſtinere.

§. X. Heredes maritentur abſque Diſparagatione, ita tamen quod antequam contrahatur Matrimonium oſtendatur propinquis de Conſanguinitate ipſius Heredis.

§. XI. Vidua poſt Mortem Mariti ſui, ſtatim, & ſine Difficultate, habeat Maritagium & Hereditatem ſuam; nec aliquid det pro Dote ſua, vel pro Maritagio ſuo, vel Hereditate ſua; quam Hereditatem Maritus ſuus & ipſa tenuerint die obitus ipſius Mariti, & maneat in Domo Mariti ſui per quadraginta dies poſt Mortem ipſius, infra quos Aſſignetur ei Dos ſua.

§. XII. Nulla Vidua diſtringatur ad ſe maritandum, dum voluerit vivere ſine Marito; ita tamen quod Securitatem faciat, quod ſe non maritabit ſine Aſſenſu noſtro, ſi de nobis tenuerit, vel ſine Aſſenſu Domini ſui de quo tenuerit, ſi de alio tenuerit.

§. XIII. Nec nos nec Ballivi noſtri Seiſiemus Terram aliquam nec Redditum pro Debito aliquo quamdiu Catalla Debitoris ſufficiunt ad Debitum reddendum, nec Plegii ipſius Debitoris diſtringantur quamdiu ipſe Principalis Debitor ſufficit ad Solutionem Debiti.

to what the Time of the Waynage ſhall require, and the Profits of the Land may reaſonably afford.

Heirs ſhall be married without Diſparagement; yet ſo that before Matrimony be contracted, the ſame be ſhewed to the next of Kin of the ſame Heir.

The Widow, after the Death of her Husband, ſhall forthwith, and without any Difficulty, have her Marriage, and her Inheritance; neither ſhall ſhe give any Thing for her Dower, or for her Marriage, or for her Inheritance; which Inheritance her Husband and ſhe held on the Day of her Husband's Death, and ſhe ſhall remain in her Husband's Houſe forty Days after his Death, within which her Dower ſhall be Aſſigned to her.

No Widow ſhall be obliged to marry herſelf, whilſt ſhe ſhall be willing to live without a Husband; yet ſo as ſhe give Security, That ſhe will not marry herſelf without our Conſent if ſhe holds of us, or without the Conſent of her Lord of whom ſhe holds, if ſhe hold of any other.

Neither we nor our Bailiffs will ſeize any Land nor Rent for any Debt, ſo long as the Goods of the Debtor are ſufficient to pay the Debt; nor ſhall the Sureties of the Debtor be diſtrained, ſo long as he, the Principal Debtor, is ſufficient to pay the Debt.

§. XIV. *And*

§. XIV. Et ſi capitalis Debitor defecerit in Solutione Debiti non habens unde ſolvat, Plegii reſpondeant de Debito; &, ſi voluerint, habeant Terras & Redditus Debitoris, donec ſit eis ſatisfactum de Debito, quod ante pro eo ſolverint, niſi Capitalis Debitor monſtraverit ſe eſſe quietum inde, verſus eoſdem Pleggios.

And if the Principal Debtor ſhall fail in Payment of the Debt, the Sureties ſhall anſwer the Debt; and, if they will, they ſhall have the Lands and Rents of the Debtor, until they ſhall be ſatisfied the Debt which they ſhall before pay for him, unleſs the Principal Debtor ſhew that he is diſcharged thereof againſt the ſame Sureties.

§. XV. Si quis mutuo ceperit aliquid à *Judeis*, plus vel minus, & moriatur, ante quam Debitum illud ſolvatur, Debitum non uſuret quamdiu Heres fuerit infra Etatem de quocunque teneat; & ſi Debitum illud inciderit in Manus noſtras, nos non Capiemus niſi Catallum contentum in Charta.

If any one ſhall borrow any thing of Jews, *more or leſs, and die before that Debt be paid, the Debt ſhall not carry Intereſt ſo long as the Heir is under Age, of whomſoever he holds; and if that Debt ſhall fall into our Hands, we will not take any thing, but the Goods contained in the Deed.*

§. XVI. Et ſi quis moriatur, & debitum debeat *Judeis*, Uxor ejus habeat Dotem ſuam, & nichil reddat de Debito illo; & ſi Liberi ipſius defuncti qui fuerint infra Etatem remanſerint, provideantur eis Neceſſaria ſecundum Tenementum quod fuerit Defuncti, & de Reſiduo ſolvatur Debitum, ſalvo Servitio Dominorum: Simili modo, fiat de Debitis que debentur aliis quam *Judeis*.

And if any one ſhall die, and owe a Debt to Jews, *his Wife ſhall have her Dower, and ſhall pay nothing of that Debt; and if the Children of the Deceaſed, who ſhall be within Age, ſhall remain, Neceſſaries ſhall be provided for them according to the Value of the Tenement which was the Deceaſed's, and out of the Reſidue, the Debt ſhall be paid, ſaving the Services due to the Lord: In like Manner ſhall it be done concerning Debts which ſhall be owing to others than* Jews.

§. XVII. *Nullum Scutagium vel Auxilium ponatur in Regno noſtro, niſi per Commune Conſilium Regni noſtri, niſi ad Corpus noſtrum redimendum, & primogenitum Filium noſtrum Militem*

No Eſcuage (*i. e. Taxes for the Helmet, or War*) or Aid ſhall be Impoſed within our Kingdom, but by the Common Council of our Realm, (*i. e. by the Parliament*) unleſs

Militem faciendum, & ad Filiam noſtram primogenitam ſemel maritandam; & ad hec non fiat, niſi rationabile Auxilium.

it be to Ranſom our Perſon, and to make our Eldeſt Son a Knight, and to marry our Eldeſt Daughter once; And for theſe Things the Aid ſhall be but Reaſonable (*or Moderate*).

§. XVIII. *Simili modo fiat de Auxiliis de Civitate London'.*

In like Manner ſhall it be done, concerning Aids from the City of *London*.

§. XIX. Et Civitas *London'* habeat omnes Antiquas Libertates & Liberas Conſuetudines ſuas, tam per Terras quam per Aquas.

And, moreover, the City of London *ſhall Enjoy all her Antient Liberties, and free Cuſtoms, as well by Land, as by Water.*

§. XX. Preterea, volumus & Concedimus, quod omnes alie Civitates & Burgi, & Ville, & Portus habeant omnes Libertates & liberas Conſuetudines ſuas.

Moreover, we Will and Concede (i. e. Agree) *That all other Cities, and Boroughs, and Towns, and Ports, ſhall have all their Liberties and free Cuſtoms.*

§. XXI. *Et ad habendum Commune Conſilium Regni de Auxilio aſſidendo (aliter quam in tribus Caſibus predictis,) vel de Scutagio aſſidendo, Summoneri faciemus Archiepiſcopos, Epiſcopos, Abbates, Comites & majores Barones ſigillatim per Litteras noſtras: & preterea, faciemus ſummoneri in generali, per Vicecomites & Ballivos noſtros, omnes illos qui de nobis tenent in Capite, ad certum diem, ſcilicet, ad Terminum Quadraginta dierum ad minus, & ad certum Locum, & in omnibus Litteris illius Summonitionis Cauſam Summonitionis exprimemus: &, ſic facta Summonitione, Negotium ad Diem aſſignatum procedat, ſecundum Conſilium illorum qui preſentes fuerint, quamvis non omnes ſummoniti, venerint.*

And to have the Common Council of the Kingdom (*i. e. the Parliament*) to Aſſeſs (*i. e. to Give*) Aids (otherwiſe than in the Three Caſes aforeſaid) or for the Aſſeſſing (*i. e. Giving and Aſcertaining*) Eſcuage (*i. e. Taxes for carrying on Wars*) we will cauſe the Archbiſhops, Biſhops, Abbots, Earls, and greater Barons, to be ſummoned by our Writs (*or written Letters*) under Seal; and, moreover, we will cauſe our Sheriffs and Bailiffs, to ſummon all thoſe in General, who hold of us in Chief (*meaning the Commons*) at a certain Day, to wit, at the End of Forty Days at the leaſt, and at a certain Place; and in all our Writs (*or written Letters*) of that Summons, the Cauſe of ſuch Summons

§. XXII.

§. XXII. Nos non concedimus, de cetero, alicui, quod capiat Auxilium de Liberis Hominibus ſuis, niſi ad Corpus ſuum redimendum & ad faciendum primogenitum Filium ſuum Militem, & ad primogenitam Filiam ſuam ſemel maritandam; & ad hec non fiat niſi rationabile Auxilium.

We will not Concede (or Agree) *for the future, That any Man ſhall take Aids of his Freemen, but only to ranſom his Perſon, to make his eldeſt Son a Knight, and to marry his eldeſt Daughter once; and for theſe Things, the Aid ſhall be but Reaſonable* (or Moderate).

§. XXIII. Nullus diſtringatur ad faciendum majus Servitium de Feodo Militis, nec de alio Libero Tenemento, quam inde debetur.

No one ſhall be diſtrained to do greater Service for a Knight's Fee, or for any other Freehold, than what is therefrom due.

§. XXIV. Communia Placita non ſequerenturCuriam noſtram, ſed teneantur in aliquo loco certo.

Common Pleas ſhall not follow our Court, but ſhall be held in ſome certain Place.

§. XXV. Recognitiones de nova Diſſeiſina, de morte Anteceſſoris, & de ultima Preſentatione, non capiatur, niſi in ſuis Comitatibus; & hoc modo, nos vel (ſi extra Regnum fuerimus) Capitalis Juſticiarius noſter mittemus duos Juſticiarios per unum quemque Comitatum, per quatuor vices in Anno; qui, cum quatuor Militibus cujuſlibet Comitatus, Electis per Comitatum capient in Comitatu, & in Die & Loco Comitatus Aſſiſas predictas: & ſi in Die Comitatus Aſſiſe predicte capi non poſſint, tot Milites & Libere Tenentes remanent

Recognizances (i. e. the Judicature) *of* Novel, Diſſeiſin, Mordanceſter, *and* Darrein *Preſentment, ſhall not be taken any where, but in their proper Counties; and in this Manner We, or our Chief Juſtice* (*if ourſelves be out of the Realm*) *will ſend Two Juſtices through every County Four Times a Year, who with Four Knights of every County, to be choſen by the County, ſhall take the ſaid Aſſizes* (i. e. the Cognizance and Tryal) *in the County, at the Day and Place of the County Court; and if the ſaid Aſſizes cannot*

remaneant de illis qui interfuerint Comitatui Die illo per quos poſſint Judicia ſufficienter fieri, ſecundum quod Negotium fuerit, majus vel minus.

cannot be taken upon that Day, ſo many Knights, and Freeholders, of them that were preſent in the County Court that Day, ſhall ſtay, by whom Judgments (i. e. Juſtice) *may be ſufficiently done according to what the Buſineſs ſhall be, Greater, or Leſs.*

§. XXVI. Liber Homo non amercietur pro parvo Delicto, niſi ſecundum modum Delicti; & pro magno Delicto amercietur ſecundum magnitudinem Delicti, ſalvo Contenemento ſuo; & Mercator, eodem modo, ſalva Merchandiſa ſua; & Villanus, eodem modo, amercietur, ſalvo Wainnagio ſuo, ſi inciderint in Miſericordiam noſtram; & nulla Predictarum Miſericordiarum ponatur, niſi per Sacramentum proborum Hominum de Viſueto.

A Freeman ſhall not be amerced for a ſmall Offence, but according to the Quantity of ſuch Offence, and for a greater Offence, he ſhall be amerced according to the Greatneſs of his Offence, ſaving his Contenement; and a Merchant ſaving his Merchandize; and a Villain, in like Manner, ſhall be amerced, ſaving his Wainage, if he fall into our Mercy; and none of the ſaid Amercements ſhall be aſſeered but by Oath of Good and Lawful Men of the Neighbourhood.

§. XXVII. Comites & Barones non amercientur niſi per Pares ſuos, & non niſi ſecundum modum Delicti.

Earls and Barons ſhall not be amerced but by their Peers; nor otherwiſe than according to the Quality of the Offence.

§. XXVIII. Nullus Clericus amercietur de Laico Tenemento ſuo, niſi ſecundum Modum aliorum predictorum, & non ſecundum Quantitatem Beneficii ſui Eccleſiaſtici.

No Clerk ſhall be amerced concerning his Lay Fee, but in like Manner as others aforeſaid, and not according to the Quantity of his Eccleſiaſtical Benefice.

§. XXIX. Nec Villa nec Homo diſtringatur facere Pontes ad Riparias, niſi qui ab antiquo & de Jure facere debent.

No Village nor any Man ſhall be diſtrained to make Bridges at the River Banks, but thoſe who antiently, and of Right, ought to make them.

§. XXX. Nullus Vicecomes, Conſtabularius, Coronatores, vel alii Ballivi noſtri, teneant Placita Corone noſtre. XXXI.

No Sheriff, Conſtable, Coroners, or other our Bailiffs, ſhall hold Pleas of the Crown.

All

§. XXXI. Omnes Comitatus, Hundredi, Wapentak', & Trethingi ſint ad antiquas Firmas, abſque ullo incremento, exceptis dominicis Maneriis noſtris.

All Counties, Hundreds, Wapentakes, and Tithings, ſhall be at the antient Farms, without being raiſed, except our own Demeſn Manors.

§. XXXII. Si aliquis, tenens de nobis, Laicum-Feodum, moriatur, & Vicecomes vel Ballivus noſter, oſtendat Literas noſtras Patentes de Summonitione noſtra de Debito quod Defunctus nobis debuit, liceat Vicecomiti vel Ballivo noſtro attachiare & inbreviare Catalla Defuncti, inventa in Laico-Feodo, ad Valentiam illius Debiti per Viſum legalium hominum; ita tamen quod nihil inde amoveatur, donec perſolvatur nobis Debitum quod clarum fuerit, & Reſiduum relinqueretur executoribus, ad faciendum Teſtamentum Defuncti: & ſi nihil nobis debeatur ab ipſo, omnia Catalla cedant Defuncto, ſalvis Uxori ipſius, & Pueris, rationalibus partibus ſuis.

If any Perſon holding of us a Lay-Fee, die, and our Sheriffs, or other our Bailiffs, ſhew our Letters Patents of Summons for a Debt which the Deceaſed owed to us, it ſhall be lawful for our Sheriff or Bailiff, to Attach and Inventory the Goods of the Deceaſed, found upon his Lay-Fee, to the Value of that Debt, by the View of lawful Men; yet ſo as nothing thereof ſhall be removed, 'till ſuch time as the Debt, which ſhall be clear, ſhall be paid, and the Reſidue ſhall be left to the Executors to perform the Will of the Deceaſed; and if nothing be owing to us from him, all his Goods ſhall go to the Deceaſed, ſaving to his Wife and Children their reaſonable Parts.

§. XXXIII. Si aliquis Liber Homo inteſtatus deceſſerit, Catalla ſua, per Manus propinquorum Parentum & Amicorum ſuorum, per Viſum Eccleſie diſtribuantur; ſalvis unicuique Debitis que Defunctus ei debebat.

If any Freeman ſhall die Inteſtate, his Goods ſhall be diſtributed, by the Hands of his near Kindred and Friends, by the View of Holy Church, ſaving to every one, the Debts which the Deceaſed owed him.

§. XXXIV. Nullus Conſtabularius, vel alius Ballivus noſter, capiat Blada, vel alia Catalla Alicujus, niſi ſtatim inde reddat Denarios, aut reſpectum inde habere poſſit de voluntate Venditoris.

No Conſtable, or other our Bailiffs, ſhall take the Corn, or other Goods, of any Perſon, unleſs he forthwith pay for the ſame, or have Time given him with the Conſent of the Seller.

§. XXXV. Nullus Conſtabularius diſtringat aliquem Militem ad dandum Denarios pro Cuſtodia-Caſtri, ſi facere voluerit Cuſtodiam illam in propria Perſona ſua, vel per alium probum Hominem, ſi ipſe eam facere non poſſit propter rationabilem Cauſam ; & ſi nos duxerimus vel miſerimus eum in Exercitum, erit quietus de Cuſtodia ſecundum Quantitatem temporis quo per nos fuerit in Exercitu.

No Conſtable ſhall diſtrain any Knight, to give Monies for Caſtle-Guard, if he will perform it in his own proper Perſon, or by another good Man, if he cannot perform it himſelf for ſome reaſonable Cauſe: And if we lead him, or ſend him, into the Army, he ſhall be diſcharged of Caſtle-Guard, for ſo long Time as he ſhall be with us in the Army.

§. XXXVI. Nullus Vicecomes vel Ballivus noſter, vel aliquis alius, capiat Equos vel Caretas alicujus Liberi Hominis, pro Cariagio faciendo, niſi de voluntate ipſius Liberi Hominis.

No Sheriff, or Bailiff, or others, ſhall take the Horſes, or Carts, of any Freeman, for making Carriage, unleſs it be with the Leave of ſuch Freeman.

§. XXXVII. Nec nos, nec Ballivi noſtri, capiemus alienum Boſcum ad Caſtra, vel alia agenda noſtra, niſi per Voluntatem ipſius cujus Boſcus ille fuerit.

Neither will we, nor our Bailiffs, take another Man's Wood for our Caſtles, or other Occaſions, unleſs it be with the Conſent of him whoſe Wood it ſhall be.

§. XXXVIII. Nos non tenebimus terras illorum, qui convicti fuerint de Felonia, niſi per unum Annum & unum Diem; & tunc reddantur Terre Dominis Feodorum.

We will not hold the Lands of thoſe who ſhall be convicted of Felony, except for one Year and one Day, and then the Lands ſhall be reſtored to the Lords of the Fees.

§. XXXIX. Omnes Kidelli, de cetero, deponantur penitus de *Thamiſſa*, & de *Medewaye*, & per totam *Angliam*, niſi per Coſteram Maris.

All Wears ſhall, from this Time forward, be wholly put down, from the Thames, *and from the* Medway, *and throughout all* England, *except upon the Sea Coaſt.*

§. XL. Breve quod vocatur *Precipe*, de cetero, non fiat alicui, de aliquo Tenemento, unde Liber Homo amittere poſſit Curiam ſuam.

The Writ which is called Precipe, *ſhall not, for the future, be made to any one, of any Tenement, whereby a Freeman may loſe his Court.*

§. XLI.

One

§. XLI. Una Menſura Vini ſit per totum Regnum noſtrum, & una Menſura Cerviſie, & una Menſura Bladi (ſcilicet) Quarterium *London'* : & una Latitudo pannorum, tinctorum & Ruſſettorum & Halbegettorum (ſcilicet) due Ulne infra Liſtas.

One Meaſure of Wine ſhall be uſed throughout our Kingdom, and one Meaſure of Ale, and one Meaſure of Corn, to wit, the London *Quarter: And there ſhall be one Breadth of dy'd Cloth, Ruſſets, and Haubergets, to wit, two Ells within the Liſts.*

§. XLII. De Ponderibus autem ſit ut de Menſuris.

Concerning Weights, it ſhall be as of Meaſures.

§. XLIII. Nichil detur vel capiatur, de cetero, pro brevi Inquiſitionis de Vita vel Membris, ſet gratis concedatur, & non negetur.

Nothing ſhall be given or taken for the future, for a Writ of Inquiſition, concerning Life or Member; but ſuch Writ ſhall be granted Gratis, *and ſhall not be denied.*

§. XLIV. Si aliquis teneat de nobis per Feodi firmam, vel per Sokagium, vel per Burgagium, & de aliis Terram teneat per Servitium Militare, nos non habebimus Cuſtodiam Heredis, nec Terre ſue, que eſt de Feodo alterius, occaſione illius Feodifirme, vel Sokagii, vel Burgagii: nec habebimus Cuſtodiam illius Feodi-firme vel Sokagii vel Burgagii, niſi ipſa Feodifirma debeat Servitium Militare.

If any Perſon hold of us by Fee-Farm, or by Soccage, or by Burgage, and ſhall hold Land of others by Knight Service, we will not have the Cuſtody of the Heir, nor of his Land, which is of the Fee of another, by reaſon of ſuch Fee-Farm, or of Soccage, or Burgage; neither will we have the Cuſtody of that Fee-Farm, or Soccage, or Burgage, unleſs that Fee-Farm owes Knights Service.

§. XLV. Nos non habebimus Cuſtodiam Heredis, vel Terre alicujus, quam tenet de alio per Servitium Militare, Occaſione alicujus parve Sergenterie, quam tenet de nobis, per Servitium reddendi nobis Cultellas vel Sagittas, vel hujuſmodi.

We will not have the Wardſhip of the Heir, or of the Land of any Perſon, which he holds of another by Knight Service, by reaſon of any Petit Serjeantry which he holds of us, as by the Service of rendring to us Knives, or Arrows, or ſuch-like.

§. XLVI. Nullus Ballivus ponat, de cetero, aliquem ad Legem, ſimplici Loquela ſua, ſine Teſtibus

No Bailiff, for the future, ſhall put any Man to his Law, upon his bare Complaint, without

Teſtibus fidelibus ad hoc inductis.

§. XLVII. Nullus liber Homo capiatur vel impriſonetur, aut diſſeiſiatur, aut utlagetur, aut exuletur, aut aliquo modo deſtruatur; nec ſuper eum ibimus, nec ſuper eum mittemus, niſi per legale Judicium Parium ſuorum, vel per Legem Terre.

§. XLVIII. Nulli vendemus, nulli negabimus, aut differemus Rectum aut Juſtitiam.

§. XLIX. Omnes Mercatores habeant ſalvum & ſecurum exire de *Anglia*, & venire in *Anglia*, & morari & ire per *Angliam*, tam per Terram quam per Aquam, ad emendum & vendendum, ſine omnibus malis Tolnetis, per antiquas & Rectas Conſuetudines, preterquam in tempore Guerre: & ſi ſint de Terra contra nos guerrina, & ſi tales inveniantur in Terra noſtra in Principio Guerre, attachiantur, ſine Dampno Corporum & Rerum, donec ſciatur a nobis vel Capitali Juſticiario noſtro, quomodo Mercatores Terre noſtre tractentur qui tunc inveniuntur in Terra contra nos guerrina; & ſi noſtri ſalvi ſint ibi, alii ſalvi ſint in Terra noſtra.

§. L. Liceat unicuique, de cetero, exire de Regno noſtro, & redire ſalvo & ſecure, per Terram & per Aquam, ſalva Fide noſtra, niſi tempore Guerre per aliquod breve tempus propter communem Utilitatem Regni;

out good Witneſſes in that Behalf produced.

No Freeman ſhall be taken, or impriſoned, or diſſeized, or outlawed, or exiled, or in any manner deſtroyed; nor will we go upon him, nor ſend others upon him, but by the lawful Judgment of his Peers, or by the Law of the Land.

We will neither ſell, nor deny nor delay Right or Juſtice to any Man.

All Merchants ſhall have Safety and Security to go out of England, *and come into* England, *and ſtay, and go through* England, *as well by Land as by Water, to buy and ſell without any evil Tolls, paying the antient and rightful Cuſtoms, except in Time of War: And if they ſhall be of a Country in War againſt us, and ſhall be found in our Land in the Beginning of the War, they ſhall be attached, but without Injury to their Bodies or Goods, until it ſhall be known to us, or to our Chief Juſtice, how the Merchants of our Land are treated, who ſhall be found in the Country at War againſt us; and if ours be ſafe there, they ſhall be ſafe in our Land.*

It ſhall be lawful for every Man, for the future, to go out of our Kingdom, and to return ſafely and ſecurely, by Land and by Water, ſaving their Faith due to us, unleſs it be in Time of War, for ſome ſhort Time,

Regni; exceptis Impriſonatis & Utlagatis ſecundum Legem Regni & Gente de Terra contra nos Guerrina, & Mercatoribus; de quibus, fiat ſicut predictum eſt.

Time, for the common Profit of the Realm; except Priſoners and outlaw'd Perſons, according to the Law of the Land, and the Nation in War againſt us, and Merchants, concerning whom it ſhall be done, as is aforeſaid.

§. LI. Si quis tenuerit de aliqua Eſcaeta, ſicut de Honore *Walingeford*, *Noteingham*, *Bon'*, *Lanckaſter* vel de aliis Eſcaetis que ſunt in manu noſtra & ſunt Baronie, & obierit; Heres ejus non det aliud Relevium, nec faciat nobis aliud Servitium quam faceret Baroni, ſi Baronia illa eſſet in Manu Baronis, & nos eodem modo eam tenebimus, quo Baro eam tenuit.

If any one ſhall hold of any Eſcheat, as of the Honour of Wallingford, Nottingham, Boloin, Lancaſter, *or of other Eſcheats which are in our Hand, and are Baronies, and ſhall die, his Heirs ſhall not give any other Relief, nor do us any other Service, than was made to the Baron, if ſuch Barony had been in the Hands of the Baron; and we will hold the ſame in like manner, as the Baron held it.*

§. LII. Homines qui manent extra Foreſtam, non veniant, de cetero, coram Juſticiariis noſtris de Foreſta, per communes Summonitiones, niſi ſint in Placito vel Pleggii alicujus, vel aliquorum qui attachiati ſint pro Foreſta.

Men who dwell out of the Foreſt, ſhall not appear, for the future, before our Juſtices of the Foreſt, by common Summons, unleſs they be in Suit themſelves, or Bail for others, who are attached for the Foreſt.

§. LIII. Nos non faciemus Juſticiarios, Conſtabularios, Vicecomites, vel Ballivos, niſi de talibus qui ſciant Legem Regni, & eam bene voluit obſervare.

We will not make Juſtices, Conſtables, Sheriffs, or Bailiffs, but of ſuch as know the Law of the Land, and will well obſerve it.

§. LIV. Omnes Barones qui fundaverint Abbatias, unde habent Cartas Regum *Anglie*, vel antiquam tenuram, habeant earum Cuſtodiam cum vacaverint, ſicut habere debent.

All who have founded Abbeys, whereof they have Charters from Kings of England, *or antient Tenure, ſhall have the Cuſtody thereof when they are vacant, as they ought to have.*

§. LV. Omnes Foreſte que afforeſtate ſunt tempore noſtro ſtatim deafforeſtentur.

§. LVI. Et ita fiat de Ripariis que per nos tempore noſtro poſite ſunt in Defenſo.

§. LVII. Omnes male Conſuetudines de Foreſtis & Warennis, & de Foreſtariis & Warennariis, Vicecomitibus & eorum Miniſtris, Ripariis & earum Cuſtodibus, ſtatim inquirantur, in quolibet Comitatu per duodecim Milites Juratos de eodem Comitatu, qui debent eligi per probos Homines ejuſdem Comitatus; & infra quadraginta Dies poſt Inquiſitionem factam penitus ita quod nunquam revocentur deleantur.

All the Foreſts that have been afforeſted in our Time, ſhall forthwith be diſforeſted.

And ſo ſhall it be done of River-Banks, which, by us, in our Time, have been erected for Defence of thoſe Rivers.

All evil Cuſtoms of Foreſts and Warrens, and of Foreſters and Warreners, of Sheriffs and their Miniſters; and of River-Banks, and of their Keepers, ſhall forthwith be enquired of in every County, by Twelve Knights ſworn of the ſame County, who ought to be choſen by the good Men of the ſame County: And within Forty Days after ſuch Inquiſition made, the ſaid evil Cuſtoms ſhall be utterly aboliſhed, by thoſe ſame Knights, ſo as never to be revived, provided they be firſt made known to us or to our Chief Juſtice.

§. LVIII. Omnes Obſides & Cartas ſtatim reddemus que liberate fuerunt nobis ab *Anglicis* in Securitatem Pacis, vel fidelis Servitii.

All Hoſtages and Charters we will forthwith reſtore, which have been delivered to us by the Engliſh, *for Security of the Peace, or of Faithful Service.*

§. LIX. Nos amovebimus penitus de Ballivis Parentes *Gerardi de Athyes*, quod de cetero nullam habeant Ballivam in *Anglia*, *Engelardum* de *Cygony*, *Andream*, *Petrum*, & *Guyonem* de *Cancell*, *Gyonem* de *Cygony*, *Galfridum* de *Martyni*, & Fratres ejus, *Philippum Mark*, & Fratres ejus, & *Galfridum* Nepotem ejus, & totam Sequelam eorumdem.

We will wholly remove from Bailiwicks, the Kindred of Gerard de Athyes, *that, for the future, they ſhall have no Bailiwick in* England; Engelard *of* Cygony, Andrew, Peter, *and* Guyon *of* Cancell, Gyon de Cygony, Geffry de Martigni, *and his Brothers,* Philip Mark, *and his Brothers, and* Geffry *his Nephew, and the whole Train of them.*

§. LX. And

§. LX. *Et ſtatim, poſt Pacis Reformationem, amovebimus de Regno omnes Alienigenos, Milites, Baliſtarios, Servientes, Stipendarios, qui venerint cum Equis & Armis ad Nocumentum Regni.*

§. LXI. Si quis fuerit diſſeiſitus vel elongatus per nos ſine legali Judicio Parium ſuorum, de Terris, Caſtellis, Libertatibus, vel Jure ſuo, ſtatim ea ei reſtituemus; & ſi Contentio ſuper hoc orta fuerit, tunc inde fiat per Judicium viginti quinque Baronum, de quibus fit Mentio inferius in Securitate Pacis.

§. LXII. De omnibus autem illis de quibus aliquis diſſeiſitus fuerit vel Elongatus, ſine legali Judicio Parium ſuorum, per *Henricum* Regem, Patrem noſtrum, vel per *Ricardum* Regem, Fratrem noſtrum, que in Manu noſtra habemus, vel que alii tenent, que nos oporteat warrantizare, Reſpectum habebimus uſque ad communem Terminum Cruce Signatorum; exceptis illis de quibus Placitum motum fuit, vel Inquiſitio facta, per Preceptum noſtrum, ante Suſceptionem Crucis noſtre.

§. LXIII. Cum autem redierimus de Peregrinatione noſtra, vel ſi forte remanſerimus a Peregrinatione noſtra, ſtatim inde plenam Juſtitiam exhibebimus.

And forthwith after Reſtoring the Peace, we will remove out of the Realm, all Foreigners, Knights, Bowmen, Serjeants, and Soldiers, who came with Horſe and Arms, to the Annoyance of the Kingdom.

If any Perſon hath been diſſeized, or Eloined, by us, without the lawful Judgment of his Peers, from Lands, Caſtles, Liberties, or of his Right, we will forthwith reſtore thoſe Things to him; and if any Difference ariſe upon it, then it ſhall be done therein, by the Judgment of the Five-and-twenty Barons, of whom Mention is made hereafter in the Security of the Peace.

Touching all thoſe Things of which any Perſon hath been diſſeized or Eloined, without the lawful Judgment of their Peers, by King Henry *our Father, or by King* Richard *our Brother, which we have in our Hands, or which others hold, to whom we are bound to warrant the ſame, we will reſpit to the common Term of them that have taken the Cruſado, except thoſe Things concerning which Suits are commenced, or Inquiſition made, by our Command, before our undertaking the Cruſado.*

But when we ſhall return from our Pilgrimage, or if, perhaps, we ſhall deſiſt from our Pilgrimage, we will forthwith exhibit full Juſtice therein:

§. LXIV. *We*

§. LXIV. Eundem autem reſpectum habebimus de Foreſtis de afforeſtandis, quas *Henricus* Pater noſter, vel *Ricardus* Frater noſter, afforeſtaverunt; & de Cuſtodiis Terrarum que ſunt de Alieno Feodo cujuſmodi, Cuſtodias huc uſque habuimus occaſione Feodi quod aliquis de nobis tenuit per Servitium Militare, & de Abbatiis que fundate fuerint in Feodo alterius quam noſtro, in quibus Dominus Feodi dixerit ſe Jus habere: & cum redierimus, vel ſi remanſerimus a Perigrinatione noſtra, ſuper his conquerentibus plenam Juſtitiam ſtatim exhibebimus.

We will have the ſame Reſpect, and in the ſame manner do Juſtice, concerning Foreſts to be diſforeſted, or to continue Foreſts, which Henry *our Father, or* Richard *our Brother, afforeſted: And concerning the Cuſtody of Lands which are of other Mens Fee, the Cuſtodies whereof, we have hitherto had, by reaſon of the Fee which any one held of us by Knight's Service; and concerning Abbeys which have been founded in the Fee of another, than in our own, in which the Lord of the Fee ſhall ſay he hath Right: And when we ſhall return, or if we ſhall deſiſt from our Pilgrimage, we will forthwith do full Right to all Perſons complaining.*

§. LXV. Nullus capiatur nec impriſonetur propter Appellum Femine de Morte alterius quam Viri ſui.

No Man ſhall be Arreſted nor Impriſoned for the Appeal of a Woman, for the Death of any other than her Husband.

§. LXVI. Omnes Fines qui injuſte & contra Legem Terre facti ſunt nobiſcum, & omnia Amerciamenta facta injuſte, & contra Legem Terre, omnino condonentur vel fiat inde per Judicium viginti quinque Baronum, de quibus fit mentio inferius in Securitate Pacis, vel per Judicium majoris Partis eorundem unacum predicto *Stephano Cantuarienſis* Archiepiſcopo, ſi intereſſe poterit, & aliis quos ſecum ad hoc vocare voluerit; & ſi intereſſe non poterit, nihilominus procedat Negotium ſine eo: ita quod ſi aliquis & aliqui de

All the Fines which are made with us unjuſtly, and againſt the Law of the Land; and all Amercements impoſed wrongfully, and contrary to the Law of the Land, ſhall be wholly pardoned, or there ſhall be done therein, according to the Judgment of the Five-and-twenty Barons, of whom Mention is made hereafter, in the Security of the Peace, or according to the Judgment of the greater Part of them, together with the ſaid Stephen *Archbiſhop of* Canterbury, *if he can be there, and others, whom he ſhall call*

to

de predictis viginti-quinque Baronibus fuerint in ſimili Querela, amoveantur quantum ad hoc Judicium, et alii Loco illorum per Reſiduos de eiſdem viginti-quinque tam ad hoc faciendum electi & jurati ſubſtituantur.

to him; and if he cannot be preſent, nevertheleſs the Buſineſs ſhall proceed without him; ſo that if any one, or more of the ſaid Five-and-twenty Barons, be concerned in the like Complaint, they ſhall be Amoved as to the Judgment therein, and others choſen and ſworn, ſhall be put in their Room, to act in their Stead, by the Reſidue of the ſaid Five-and-twenty Barons.

§. LXVII. Si nos diſſeiſivimus vel elongavimus *Walenſes* de Terris vel Libertatibus, vel rebus aliis, ſine legali Judicio Parium ſuorum, eis ſtatim reddantur; & ſi Contentio ſuper hoc orta fuerit, tunc inde fiat in *Marchia* per Judicium Parium ſuorum, de Tenementis *Anglie*, ſecundam Legem *Anglie*; de Tenementis *Wallie*, ſecundum Legem *Wallie*; de Tenementis *Marchie*, ſecundum Legem *Marchie*; idem facient *Walenſes* nobis & noſtris.

If we have diſſeized or eloined any Welſhmen *of Land, Franchiſes, or other Things, without the lawful Judgment of their Peers in* England, *or in* Wales, *the ſame ſhall forthwith be reſtored; and if Contention ſhall ariſe thereupon, then it ſhall be done therein in the Marches, by the Judgment of their Peers, concerning Lands of* England, *according to the Law of* England; *concerning Lands of* Wales, *according to the Law of* Wales; *concerning Lands of the* Marches, *according to the Law of the* Marches: *The* Welſhmen *ſhall do the ſame to us, and our Subjects.*

§. LXVIII. De omnibus autem illis de quibus aliquis *Walenſium* diſſeiſitus fuerit vel elongatus ſine legali Judicio Parium ſuorum, per *Henricum* Regem Patrem noſtrum, vel *Ricardum* Regem Fratrem noſtrum, que nos in Manu noſtra habemus, vel que alii tenent' que nos oporteat warantizare, reſpectum habebimus uſque ad communem

Concerning all theſe Things, of which any of the Welſhmen *have been diſſeized or eloin'd, without the lawful Judgment of their Peers, by King* Henry *our Father, or King* Richard *our Brother, which we have in our Hands, or which others hold, to whom we are bound to warrant the ſame, we reſpite the ſame, until the common Term*

nem Terminum Cruce Signatorum : illis exceptis de quibus Placitum motum fuit, vel Inquiſitio facta per Preceptum noſtrum ante Suſceptionem Crucis noſtre.

§. LXIX. Cum autem redierimus, vel ſi forte remanſerimus a Perigrinatione noſtra, ſtatim eis inde plenam Juſtitiam exhibemus, ſecundum Leges *Walenſium*, & Partes predictas.

§. LXX. Nos reddemus Filium *Lewelini* ſtatim, & omnes Obſides de *Wallia*, & Cartas que nobis liberate fuerint in Securitatem Pacis.

§. LXXI. Nos faciemus *Alexandro* Regi *Scotorum* de Sororibus ſuis, & Obſidibus reddendis, & Libertatibus ſuis & Jure ſuo, ſecundum Formam in qua faciemus aliis Baronibus noſtris *Anglie* ; niſi aliter eſſe debeat per Cartas quas habemus de *Willielmo* Patre ipſius, quondam Rege *Scotorum*: & hoc erit per Judicium Parium ſuorum in Curia noſtra.

§. LXXII. Omnes autem iſtas Conſuetudines predictas, & Libertates, quas nos conceſſiſſimus in Regno noſtro tenendas, quantum ad nos pertinet erga noſtros, omnes de Regno noſtro tam Clerici quam Laici obſervent quantum ad ſe pertinet erga ſuos.

of thoſe that have taken the Cruſado; thoſe Things excepted, of which Suits were commenced, or Inquiſition taken by our Command, before our undertaking the Cruſado.

When we ſhall return from our Pilgrimage, or if peradventure we forbear going, we will forthwith cauſe Juſtice to be fully done therein, according to the Laws of Wales, *and the Parties aforeſaid.*

We will forthwith reſtore the Son of Lewelyn, *and all the Hoſtages of* Wales, *and the Charters that have been delivered to us, for the Security of the Peace.*

We will deal with Alexander *King of* Scotland, *concerning the reſtoring his Siſters and Hoſtages, his Franchiſes, and his Right, according to the Form in which we ſhall do to our other Barons of* England, *unleſs it ought to be otherwiſe, by Virtue of the Charters which we have from his Father* William, *late King of the* Scots, *and this to be by the Judgment of his Peers in our Court.*

All theſe Cuſtoms aforeſaid, and Franchiſes, which we have Conceded (i. e. Agreed) *to be holden in our Kingdom, ſo far as belongs to us, towards ours, all Men of our Kingdom, as well Clergymen as Laymen, ſhall obſerve, ſo far as belongs to them, towards Theirs.*

§. LXXIII. So

§. LXXIII. *Cum autem pro Deo, & Emendatione Regni noſtri, & ad melius Sopiendam Diſcordiam inter nos & Barones noſtros ortam, hec omnia predicta Conceſſerimus, volentes ea integra & firma Stabilitate gaudere facimus & concedimus eis Securitatem ſubſcriptam; (videlicet) quod Barones eligant viginti-quinque Barones de Regno quos voluerint, qui debeant, pro totis viribus ſuis, obſervare, tenere, & facere obſervari Pacem & Libertates quas eis conceſſimus, & hac preſenti Carta noſtra confirmavimus; ita, ſcilicet, Quod ſi nos, vel Juſtitiarius noſter, vel Ballivi noſtri, vel aliquis de Miniſtris noſtris, in aliquo erga aliquem* **Delinquerimus,** *vel aliquem Articulorum Pacis aut Securitatis* tranſgreſſi fuerimus, *&* **Delictum,** *oſtenſum fuerit quatuor Baronibus de predictis viginti-quinque Baronibus, illi quatuor Barones accedant ad nos, vel ad Juſtitiarium noſtrum, ſi fuerimus extra Regnum, proponentes nobis* **Exceſſum,** *petent ut* Exceſſum *illum ſine Dilatione faciamus emendari; & ſi nos* **Exceſſum** *non emendaverimus, vel (ſi fuerimus extra Regnum) Juſticiarius noſter non emendaverit infra tempus quadraginta dierum, computandum a tempore quo monſtratum fuerit nobis, vel Juſtitiario noſtro, ſi extra Regnum fuerimus, predicti quatuor Barones referant Cauſam illam ad Reſiduos*

So alſo, whereas for God's Sake, and for the Amendment of our Government, and the better to lay aſleep the Diſcord ſprung up betwixt us and our Barons, we have Conceded (*i. e. Agreed*) to all theſe things, willing, That they be enjoyed for ever, with an intire and firm Stability; we do make and grant to our People, the Security under-written (*to wit*) That the Barons ſhall chuſe Five-and-twenty Barons of the Realm, whom they will, who ought, to their utmoſt Power, obſerve, hold, and cauſe to be obſerved, the Peace and Liberties which we have conceded to, and by this our preſent Charter have confirmed; ſo, *to wit*, that if we, or our Juſtice, or our Bailiffs, or any of our Miniſters, ſhall, in any thing towards any Man, fail to do Right, or ſhall tranſgreſs any of the Articles of this Peace or Security, and ſuch **Failure** to do Right, ſhall be ſhewn to Four Barons of the ſaid Five-and-twenty Barons; Thoſe Four Barons ſhall come to us, or to our Juſtice, if we ſhall be out of the Realm, propounding to us the **Exceſs,** and praying, that we will cauſe that **Exceſs** to be, without Delay, amended: And if we ſhall not amend ſuch **Exceſs,** or if we ſhall be out of the Realm, and our Juſtice ſhall not amend it, within the Space of Forty Days, to be computed from

Reſiduos de viginti-quinque Baronibus, & illi viginti-quinque Barones cum Communitate totius Terre, diſtringent & gravabunt *nos modis omnibus quibus poterunt; ſcilicet, per Captionem Caſtrorum, Terrarum, Poſſeſſionum, & aliis modis quibus poterunt, donec fuerit emendatum, ſecundum Arbitrium eorum; Salva Perſona noſtra & Regine noſtre, & Liberorum noſtrorum: & cum fuerit emendatum, intendent nobis ſicut prius fecerunt.*

from the Time, when it ſhall be ſhewed to us, or to our Juſtice (if we be out of the Realm); Then the ſaid Four Barons ſhall Report the Cauſe to the Reſidue of the ſaid Five-and-twenty Barons, and thoſe Five-and-twenty Barons, with the Commonalty of the whole Land, ſhall and may diſtreſs and grieve us, by all the Means they can; *to wit*, By taking Caſtles, Lands, Poſſeſſions, and by ſuch other Means as they can, until it ſhall be amended, according to their Judgment; ſaving our Perſon, and the Perſons of our Queen, and of our Children: and when it ſhall be amended, they ſhall obey us as before.

§. LXXIV. Et quicunque voluerit de Terra, Juret quod ad predicta omnia exequenda parebit Mandatis predictorum viginti-quinque Baronum, & quod gravabit nos pro poſſe ſuo cum ipſis; & nos publice & libere damus Licentiam jurandi cuilibet qui jurare voluerit, & nulli unquam jurare prohibemus.

And whoſoever of the Realm will, may ſwear, in order to execute all the Things aforeſaid, that he will obey the Commands of the ſaid Five-and-twenty Barons, and that he, with them, will, to his Power, grieve us; and we will publickly and freely give Liberty of ſwearing, to every one that will ſwear, and will never prohibit any one to ſwear.

§. LXXV. Omnes autem illos de Terra, qui per ſe & ſponte ſua, voluerint jurare viginti-quinque Baronibus de diſtringendo & gravando; nos, cum eis, faciemus jurare eiſdem de Mandato noſtro, ſicut predictum eſt.

Alſo, all thoſe of the Realm, who, for themſelves, and of their own Accord, will ſwear to the Twenty-five Barons, to diſtreſs and grieve us, we, together with them, will, by our Command, cauſe them to ſwear to the ſaid Barons, as is aforeſaid.

§. LXXVI. *And*

§. LXXVI. Et ſi aliquis de viginti-quinque Baronibus deceſſerit, vel a Terra receſſerit, vel aliquo alio modo impeditus fuerit, quo minus, iſta predicta poſſent exequi, qui Reſidui fuerint de predictis viginti-quinque Baronibus, eligant alium, Loco ipſius pro Arbitrio ſuo, qui ſimili modo erit juratus, quo & ceteri.

And if any of the ſaid Five-and-twenty Barons ſhall die, or withdraw out of the Realm, or ſhall be in any way hindred, whereby they cannot execute the Things aforeſaid, the Reſidue of the ſaid Five-and-twenty Barons, ſhall chooſe another in his Place, for his Judgment, who ſhall be, in like manner, ſworn as the reſt were.

§. LXXVII. In omnibus autem que iſtis viginti-quinque Baronibus Comittuntur exequenda, ſi forte ipſi viginti-quinque preſentes fuerint, & inter ſe ſuper Re aliqua diſcordaverint, vel aliqui ex eis ſummoniti, nolint vel nequeant intereſſe, ratum habeatur & firmum, quod major pars eorum, qui preſentes fuerint, proviserit vel preceperit, ac ſi, omnes viginti-quinque in hoc conſenſiſſent.

So alſo, in all Things which are committed to the ſaid Five-and-twenty Barons to be Executed, if by Chance they, the ſaid Five-and-twenty, ſhall not be preſent, or ſhall diſagree about the Matters left to them, or any of thoſe that are ſummoned, cannot, or will not, come, it ſhall be accounted authentick and firm, whatſoever the major Part of them, who ſhall be preſent, ſhall provide and command, as if all the Five-and-twenty had joined therein, and conſented.

§. LXXVIII. Et predicti viginti-quinque Jurent, quod omnia antedicta fideliter obſervabunt, &, pro toto poſſe ſuo, facient obſervari.

And the ſaid Five-and-twenty Barons ſhall ſwear, that they will faithfully obſerve all the Matters aforeſaid, and, to the utmoſt of their Power, cauſe them to be obſerved.

§. LXXIX. Et nos nihil impetrabimus ab aliquo, per nos nec per alium, per quod aliqua iſtarum Conceſſionum & Libertatum, revocetur vel minuatur; & ſi aliquid tale impetratum fuerit, irritum ſit & inane, & nunquam eo utemur per nos nec per alium.

And we will not obtain from any one by ourſelves, or by any other, any thing whereby any of theſe Conceſſions (i. e. Agreements) *or any of theſe Liberties, ſhall be revoked, or weakened; and if any ſuch thing ſhall be obtained, it ſhall be null and void, and ſhall never be*

§. LXXX. Et omnes malas Voluntates, Indignationes, & Rancores ortos, inter nos & Homines noſtros, Clericos & Laicos, a tempore Diſcordie, plene omnibus remiſimus & condonavimus.

§. LXXXI. Preterea, omnes Tranſgreſſiones factas Occaſione ejuſdem Diſcordie a Paſcha Anno Regni noſtri ſexto-decimo, uſque ad Pacem reformatam, plene remiſimus omnibus Clericis & Laicis, & quantum ad nos pertinet, plene condonavimus.

§. LXXXII. Et inſuper fecimus eis fieri Literas teſtimoniales Patentes, Domini *Stephani Cantuarienſis* Archiepiſcopi, Domini *Henrici Dublin'*, Archiepiſcopi, & Epiſcoporum predictorum & Magiſtri *Pandulfi*, ſuper Securitate iſta & Conceſſionibus prefatis.

§. LXXXIII. Quare volumus & firmiter precipimus, quod *Anglicana* Eccleſia libera ſit, & quod Homines in Regno noſtro habeant & teneant omnes prefatas Libertates, Jura & Conceſſiones, bene & in Pace, libere & quiete, plene & integre, ſibi & Heredibus ſuis, de nobis & Heredibus noſtris, in omnibus Rebus & Locis, in perpetuum, ſicut predictum eſt.

made Uſe of by us, nor by any other.

And all Ill-will, Reſentments, and Rancour, ſprung up between us, and our People, Clergymen and Laymen, from the Time of the Diſcord, we do fully remit to, and pardon them all.

Furthermore, all Treſpaſſes committed by Occaſion of the ſaid Diſcord, ſince Eaſter, *in the Sixteenth Year of our Reign, until Peace be eſtabliſhed, we do fully remit to all Men, Clerks, and Laymen, and, ſo far as concerns us, do fully pardon.*

And moreover, we have cauſed to be made to them, Letters Patents, teſtified by Stephen *Archbiſhop of* Canterbury, Henry *Archbiſhop of* Dublin, *and by the Biſhops aforeſaid, and by Mr.* Pandulphus, *upon this Security, and the Conceſſions* (i. e. Agreements) *aforeſaid.*

Wherefore we will, and ſtrictly command, that the Church of England *be free, and that the Men in our Kingdom ſhall have and hold all the ſaid Liberties, Rights, and Conceſſions* (i. e. Agreements) *well, and in Peace, freely and quietly, fully and entirely, to them, and their Heirs, of us, and our Heirs, in all Things and Places, for ever, as is aforeſaid.*

§. LXXXIV. So

§. LXXXIV. *Juratum eſt autem, tam ex parte noſtra, quam ex parte* Baronum, *quod hec omnia ſupradicta, bona fide, & ſine malo Ingenio, obſervabuntur.*

§. LXXXV. Teſtibus ſupradictis, & multis aliis; Data per Manum noſtram, in Prato quod vocatur *Runningmed'* inter *Windeleſorum & Stanes*, quinto-decimo Die *Junii*, Anno Regni noſtri ſeptimo-decimo.

So alſo, it is now ſworn, as well on our Part, as on the Part of the Barons, That all theſe Matters aboveſaid, ſhall, *Bona Fide*, and without artful Evaſions, be obſerved.

The Perſons aboveſaid, and many others, being Witneſſes; Given by our own Hand, in the Meadow which is called Running Mead, *between* Windeleſor *and* Stanes, *the fifteenth Day of* June, *in the ſeventeenth Year of our Reign.*

Deleantur per eoſdem, ita quod nos hoc ſciamus prius, vel Juſtitiarius noſter, ſi in *Anglia* non fuerimus.

Eundem autem reſpectum habebimus, & eodem modo de Juſtitia exhibenda *de Foreſtis Deafforeſtandis* vel remanſuris Foreſtis.

∴ *Parium ſuorum* in *Anglia* vel in *Wallia*.

∴ *gaudere* in perpetuum.

It is Expected, that an Objection will be made to the Tranſlation of this Charter, *viz.* That the Word *Conceſſimus*, in Charters or Deeds, properly ſignifies a Gift, or Diſpoſition of ſomething, that the Donor had to give, and which the Donee wanted, or had not before: Whereas that Word, *Conceſſimus*, is here rendered to ſignify an Agreement, or Conceſſion, to allow or obſerve ſomething, that was in being, or in *eſſe* before; and the Tranſlation is, as will be objected for that Reaſon, Unfair.

Anſwer, The *Latin* Verb *concedo* ſignifies as much to *contract*, as to *give*, and is as properly uſed in Covenants or Contracts, as in Gifts or Diſpoſitions; for, in common Contracts, or Agreements between common Perſons, the common Form is thus; A *Covenants, Grants, and Agrees with* B; or, A *Covenants, Promiſes, and Grants to, and with* B; To do ſuch or ſuch a Thing;

Thing; there the Word *concedo*, or Grant, ſounds in Contract, and to yield, or agree to give up, ſomething contended for; ſo in this Charter, the Word *conceſſimus* ſounds throughout, as a Contract, or Engagement, to adminiſter the Government, according to the Rights of the People, there ſet down; it being inconſiſtent with common Senſe, to conſtrue the Word *conceſſimus*, in this Charter, to ſignify a new Gift, or Diſpoſition of new Things, that were not in Being before; for how could King *John* give, as a new Gift to the City of *London*, or other Cities and Sea-Ports, *&c.* their Antient Liberties, which were theirs for Ages, before King *John* was King; and which may be preſumed, to commence at firſt, by former Acts of Parliament?

How could King *John* give or diſpoſe of other Mens Properties, or Queſtions of Properties, between Guardians and their Pupils, or between Widows and the Heirs of their Husbands, or between Lords of Manors and their Tenants, or between Creditors and their Debtors, or to make Diſpoſitions of the Eſtates of Men dying Inteſtate?

It may be alſo Aſſerted, That the *Latin* Words (*Commune Concilium Regni*) are the *Latin* Words which were antiently uſed in Records, to render or ſignify the common Word [Parliament].

The Tranſlation being thus (as is ſuppoſed) vindicated, the next Things to be obſerved upon this Charter, are, That there had been great Diſcords between the King and his People, and that the Grounds of that Diſcord, appear from that Charter to be, the King's Contravention, to the known Rules of this Conſtitution, and particularly for aſſuming a Power to impoſe Taxes, without a Grant thereof in Parliament; and that the whole Tenor of the Charter, imports an Agreement, to make Reſtitution for Wrongs done, and Proviſions againſt future Injuries; for the King parts with no new Things, which the People had not before a Right to; the Words are, *Ad Sopiendam Diſcordiam*, i. e. *To put all Diſcord to ſleep for ever, and never more to awake.*

The principal Articles in this Charter, are, *That no Taxes or Aids ſhall be impoſed, without the Common Council of the Realm* (i. e. in Parliament) *The Manner how Parliaments ſhould be ſummoned, and how they ſhould proceed in aſſeſſing or giving*

giving Taxes; and other Matters touching the Adminiſtration of Juſtice, are here deſcribed and ſpecified.

It may be obſerved from this Charter, That in thoſe Times, infinite were the People's Grievances about Tenures and Wardſhips, and about the Manner of the King's Seizure of the Wards Lands, and his committing Waſte in them, and the Difficulties of obtaining Liveries of thoſe Lands, out of the Royal Hands, which Impoveriſhed all the great Families, when the Heir was under Age at his Anceſtor's Death; of all which, the Nation is now happily delivered, when thoſe Pretenſions were purchaſed off, by granting to the Crown, the Exciſe on Beer and Ale, as a Compenſation for them.

The Foreſts and Rivers produced numerous Oppreſſions.

This Charter, therefore, reduced into a Method of Right and Juſtice, thoſe Diſorders, and, moreover, provided a Remedy whereby Arbitrary and Unjuſt Tranſgreſſions, or Proceedings, ſhould, in a mild and gentle Method, be **Diſturbed** and Redreſſed; and that, for that End, there ſhould be a grand Suſpence, even of the People's Obedience, 'till the Grievance ſhould be *Reformed*.

This Charter points out, what the People were, on their Parts, to do and obſerve, *viz. They were to obey the King's Summons, when he commanded them to make Elections of Repreſentatives; and to meet and attend him in Parliament; and to Counſel him in his Grand Affairs; and to give and aſſeſs Taxes for carrying on Wars; and to give Aids for other Purpoſes.*

And, to conclude, This Charter ſhews the very **Form** how the King and People, after great Diſcord and Diſſentions, renewed the **Original Contract**, *Each* ſwearing to the other, to obſerve all the Agreements and Things therein Conceded To, and Agreed on, and each of thoſe Agreements were, according to that Oath, to be performed ſincerely, without deceitful or artful Evaſions.

This Proof, therefore, of the Conſtitution, and of the *Original Contract* to obſerve it, accrewing from the Proceedings in this Charter, is ſo ſtrong, that, to require plainer, or more authentick Evidence, would be Unreaſonable.

This *Magna Charta* of King *John*, ought to be accounted an Act of Parliament of equal Authority with King *Henry* III's *Magna Charta*, which was, but Ten Years after King *John*'s Charter, ſettled and adjuſted; for nothing hath been at any Time ſince done, either to Repeal or Weaken it; and therefore every Article of this Charter of King *John*, that is not ſince, by Act of Parliament, altered, remains the common Law of the Land, and is comprized in the **Original Contract**, and as ſuch, ought to be obſerved and performed.

But the Parliament Rolls, of this **Magna Charta** of King *John*, ſuffered the ſame Violence or Loſs, as other Parliament Rolls, and the ſame being Copied only in the Hiſtorian *Matthew Paris*, That Copy was not a ſufficient Authority to be inſiſted on; but if the **Original Charter**, under the great Seal of King *John*, now extant in the *Cottonian Library*, could have been formerly produced, there's no Doubt, but my Lord *Coke*, and other Sages, would have given it *Encomiums*, ſuitable to thoſe, they have given to King *Henry* III's MAGNA CHARTA.

BREACHES IN THE REIGN OF KING HENRY III.

CHAP. V.

SECT. I.

THIS King being, at the Death of his Father King *John*, a Child of Ten Years of Age, was looked upon favourably, as being Innocent of his Father's *Miſgovernment*; for the *Britiſh* People naturally Love and Adhere to, and never Abandon their Princes, but in Caſes, when their Rights and Liberties are *Invaded*; and when by Oppreſſion and Deſpair of Redreſs, they are driven to *Vindicate* this Conſtitution; and in thoſe Caſes, they have hitherto been found, and may they always be found, Invincible and Succeſsful.

The Barons and Commons, about this Time, diſcovered, That the Diſpoſitions of *Lewis*, were compounded of Perfidy and

and Ingratitude; for he, with his *French* Nobility, had entered into private Oaths and Engagements, whereby *Lewis*, after he ſhould be Eſtabliſhed in the Kingdom, was to *deſtroy* and *extirpate* the *Engliſh*, as a Race of Traitors, and to People this Nation with *Frenchmen*; (to wit) That *Lewis* would perpetrate that very *Wickedneſs*, which he, upon their Invitation, came to *prevent*; Great Numbers therefore of the Barons and Commons deſerted the ODIOUS *Lewis*, and adhered to young *Henry*, whom they placed in the Throne, and crowned him at *Glouceſter*; in which Tranſaction, the Efforts of *William Strongbow* the Marſhal, Earl of *Pembroke*, who was made his Protector, were eminently diſtinguiſhed.

King *Henry*'s Party grew daily ſtronger, and *Lewis*'s weaker, inſomuch that *Lewis* was confin'd to *London*, and the Parts adjacent, of which he, for about one Year and ſome Months, maintained his Poſſeſſion, expecting from his Father, the *French* King, great Reinforcements; with which, if they had arrived, all his Deſigns might, probably, have been accompliſhed.

But at this Time, *Providence*, in Favour of the *Britiſh* People, interpoſed again, and partly by Storms, and partly by King *Henry*'s ſmall Fleet, a formidable *French* Reinforcement was, on the *Engliſh* Coaſts, near the Iſle of *Thanet*, intirely DEFEATED; which Diſappointment, together with the Loſs of a Battle at *Lincoln*, where his *French* General, the Earl of *Perch*, with many of the *Engliſh* Barons of his Party, were ſlain, and the reſt made Priſoners of War, reduced *Lewis* and his *French* Army, to the Neceſſity of a Treaty with King *Henry*, which, in a ſmall Iſland in the River *Thames*, near *Stanes*, was finally concluded; in which Treaty, *Lewis* acted a Part that was Princely and Honourable; for, after it was provided and agreed, That he and his *French* Forces ſhould, in a ſafe and commodious Manner, depart and quit *England*;

He provided and ſtipulated, *That his* INVITERS *and Adherents ſhould not, after his Receſs, be Sufferers, or be treated with Reproaches or Aſperſions*: And accordingly, two of the moſt material Articles of this Stipulation, amounted to a compleat Indemnity and Oblivion (*viz.*)

I. *That*

I. *That all the Rights, Inheritances, and Liberties of the Barons and Commons of* England, *for which the Conteſt and Struggle between King* John *and his People began, ſhould be reſtored, and be by them enjoyed.*

II. *That none ſhould ſuffer* Damage *or Reproach, for taking Part with the one Side, or the other.*

To the Performance of which Articles, King *Henry*, although an Infant of about Twelve Years old, took his Oath on the Evangeliſts; and the latter of theſe Conditions proved to be the Plan or Precedent for the Act of Oblivion and Indemnity, and other Acts paſſed about the Year 1660, by King *Charles* II. at his Reſtoration.

SECT. II.

IN the Fourth Year of this King, and in the 14th Year of his Age, died *William Strongbow*, the Great Earl Marſhal, and in his Room the rich Biſhop of *Wincheſter*, *Peter de Rupibus*, was made Protector of the King and Kingdom.

King *Henry*, in the 16th Year of his Age, being the Sixth of his Reign, by the Contrivance of ſome Great Men, after *Strongbow*'s Death, cauſed Writs to be iſſued, and ſent to the Sheriffs, commanding them to ſummon Juries, and inquire of them, What were the antient Liberties and Laws of the Land, which, of Right, ought to be enjoyed by the Nobility and Commonalty of *England*.

This Proceeding ſeems ſtrange, and from the pretended and unuſual Plauſibility and Fairneſs of it, may be inferred, ſome unfair Dealing, for theſe Reaſons; Firſt, It is ſtrange, *That the Articles, or Particulars of thoſe Liberties and Laws, which had been ſo lately challenged, and fought for, and vindicated, and at laſt Adjuſted, and Settled in King* John's *Charter, ſhould be ſo ſoon forgotten; as to need an Inquiſition to be made by Country Juries*; Secondly, Becauſe it is more ſtrange, *That the Wiſe Men of the Kingdom ſhould expect Inſtruction, in ſuch a Caſe, from Juries compoſed of unlearned Countrymen*; Thirdly, Becauſe, *Thoſe unlearned Jurymen, omitted to find* Two *of the principal Rights and Hereditary Privileges of the People*, viz. *To be repre-*

repreſented in Parliament, and to be free from all Taxes, *but ſuch as they ſhould freely Give and Grant in Parliament.*

However, an Act paſſed in a Parliament held at *Weſtminſter*, in the 19th Year of this King's Age, being the Ninth of his Reign, whereby it was Declared and Eſtabliſhed, between the King and the People, what were ſome of thoſe antient Liberties and Laws of the Land, according to which the Government of this Nation ought to be Adminiſtred.

But here it is obſervable, That Five of the moſt material Clauſes of King *John*'s Charter, were, by the ſiniſter Practices of ſome of the Great Men, Subſtracted, and Artfully Omitted, *viz.*

I. That Clauſe Declaring, *That no Aids or Taxes ſhould be impoſed on the People, unleſs by common Conſent or Gift thereof in Parliament*: And in the Room of it was inſiduouſly foiſted in, this ambiguous Clauſe; *Scutagium, de cetero, capiatur, ſicut capi conſuevit tempore* Henrici *Regis Avi noſtri.* i. e. *That Service, or Money for Service, in War ſhall be, for the future, taken, as it was uſed to be taken in the Time of this King's Grandfather*; meaning King *Henry* II.

II. That Clauſe, whereby it was Declared, *That in Order to have the common Advice and Counſel of the Nation, in Aſſeſſing Aids and Taxes, Parliaments ſhould be ſummoned; and, that in the Writs of Summons, the Cauſe of their being ſummoned ſhall be expreſſed.*

III. The Clauſe relating to *Foreigners.*

IV. That Clauſe, Whereby *the Barons and Commonalty ſhould, upon Refuſal to Redreſs the* Breaches *of the Conſtitutions in the Charter mentioned, have Power to diſtreſs and grieve the King, by taking his Caſtles, Lands, and Poſſeſſions, until thoſe Breaches ſhould be amended* (ſaving the Perſons of the King and Queen, and their Children); And,

V. That Clauſe, Whereby *the King and the People reciprocally entred into an Oath or Contract, to obſerve the Articles or Stipulations of that Charter*; notwithſtanding King *Henry* was old enough, and might as well have ſworn to perform the Articles of this Charter, as he did to perform the Treaty with *Lewis* the Dauphin. However,

However, the Lords and Commons, in Conſideration of the Royal Aſſent to this Statute, which declared many ſubſtantial Parts of the Original Conſtitution, gave the King a very great Aid or Supply; and, for the more certain and ſure *Evidence* and Manifeſtation of thoſe Antient Liberties and Laws, in all Times to come, againſt the King, this Act of Parliament was, as the former had been, *Penn'd in the Form* of a Charter; and many Duplicates thereof, paſſed under the Great Seal, *viz.* One to be publiſhed and kept in each County of *England*: This Momentous Act of Parliament therefore obtained the Name of **Magna Charta**, and has, in all ſucceeding Times, been accounted the Standard of thoſe **Antient** Liberties and Laws of *England*, to which the People thereof, were Originally Intitled.

But when the **Fraud** (which procured the Five Clauſes above mentioned, to be omitted out of this *Magna Charta*) came to be diſcovered, the Lords and Commons never ceaſed contending and ſtruggling, until that Clauſe, which prohibited the *Impoſing* Taxes, and Levying Money, without a Grant thereof in Parliament, was Reſtored and Explained, as herein after will Appear.

SECT. III.

KING *Henry*'s Reign extended to 56 Years, being a longer *Period*, than any of our Kings ever arrived to; during which long Reign, there happened, in Relation to the *Conſtitution*, many notable Occurrences. To repreſent, therefore, this King's Adminiſtration fairly, it becomes requiſite, to ſhew thoſe Inſtances wherein his **Conduct** was commendable, and wherein his Miſgovernment was ſo culpable, as to Revive the Wars between him, and his People, called, The **Barons Wars.**

As to the former, it is remarkable;

1. *That the King never aſſumed a Legiſlative Power to Impoſe (by regal Authority) any General Tax upon his People, without a Gift thereof in Parliament, though his Parliaments, at ſeveral Times,* **denied** *to give him any manner of Supplies; but, on the contrary, he acted in ſuch Manner,*

Manner, that the bare Surmizes and Reports of any ſuch Intention, were by him Diſowned, and immediately Suppreſſed.

II. *He did not attempt to* **Govern**, *without the other Two Eſtates of Lords and Commons; for in his Reign were held, no leſs than 23 Parliaments.*

III. *That he, in reſpect to his Minions, or Servants, conſtantly choſe the* **leſſer Evil**, *by frankly delivering up to* Juſtice, *his Favourites and Evil Miniſters; and that Method never failed to ſecure to him his Safety, and, in ſome Meaſure, his Honour.*

As to the latter Part, to wit, Thoſe Inſtances in which this King's **Miſgovernment** conſiſted, the ſame will the better appear, after Two of his Majeſty's Perſonal Infirmities are premiſed.

I. *This King was immeaſurably addicted to Foreigners, who Flatter'd him, and whom he, therefore, Advanced to be his Counſellors and Miniſters of State, and, by them, diſpenſed his Government.*

II. *His Majeſty was unaccountably Changeable, very often making ſolemn Promiſes, and even Oaths, to* **Govern** *according to* Magna Charta, *and as often lightly breaking them.*

SECT. IV.

THE **Breaches** of the Conſtitution made by this King, from which, as the Source, thoſe **Wars** between him and his People, called the *Barons Wars*, were Produced and Revived, were theſe:

The King, when he attained the full Age of 21 Years, did, by the Counſel and Advice of *Hubert de Burgo*, his Chief Juſtice, ſet up theſe **Groſs** Evaſions to avoid, not only his own *Charter*, but the *Charter* of his Father King *John*, viz. *That his Father's Charter, or Act of Parliament, to which he gave the Royal Aſſent at* Running Mead, *was gained from him by Force, or Dureſs, and was, for that Reaſon, Void; and that his*

his own Royal Aſſent given to the Act of Parliament called **Magna Charta**, *was gained from him when he was under the Age of* 21 *Years, and was therefore Void for Nonage*; And upon theſe weak Pretences, he aſſumed an **Arbitrary** diſpenſing Power, and, in a full Parliament, held about the 11th Year of his Reign, at *Oxford*, he took upon him to *declare*, and did declare, *this Statute of* Magna Charta *to be* **Null** *and* **Void**, *and that he would, in no Sort, be bound by it*: And this King, in full Parliament, *Cancelled* one Duplicate of **Magna Charta** with his own Hands, by **Tearing** off the Great Seal before their Faces.

This Declaration, and Cancellation, ſet all in Confuſion, and Revived the old Queſtion between this King, and his People, which had been controverted between them, and his Father, and which had been ſo lately and ſolemnly, in Favour of the Lords and Commons, determined.

From this Time, therefore, it's plain, the King, and the Lords and Commons, ſtood in Terms of Oppoſition, the one contriving how to ſupport an Abſolute and Unlimitted Power, and the other to Recover their Hereditary Rights and Privileges.

SECT. V.

THE King having ſo declared himſelf of full Age, the Protectorſhip of the Biſhop of *Winchester* ceaſed; whereupon *Hubert de Burgo*, his Chief Juſtice, for ſome Time *Steered* his Government, and beſtirred himſelf chiefly in wreſting from the People what Monies he could, to ſupply his Maſter's Deſigns; but all he could do, fell ſhort of the Occaſions.

In theſe State Difficulties, the Biſhop of *Winchester* ſurrounded the King, inſinuating, That *Hubert de Burgo*'s Conduct was deficient, and, upon Pretences to effect for the King great Matters, if he, and his Friends, might have the Adminiſtration, he particularly propoſed to compaſs much Honour and Power, by adding the Country of *Poictou* to the King's *French* Dominions.

The little Country of *Poictou*, lying between the King's Territories of *Guyenne* and *Gaſcoign*, was often Embroiled in the

Quarrels between the Kings of *France* and *England*, in which King *Henry* had been generally Unfortunate; but now, about the 17th Year of King *Henry*'s Reign, the People of *Poictou*, by the Influence of their Countryman *Peter de Rupibus*, Biſhop of *Wincheſter*, choſe the Side of *England*, and, by putting themſelves under the *Protection* of King *Henry*, added their Country to his Dominions.

This new Acquiſition ſo Elated King *Henry*, that he committed to the Biſhop, the whole Adminiſtration.

And upon this Change of the Miniſtry, the Treacherous Advice which *Hubert de Burgo*, who was now advanced to be Earl of *Kent*, had given the King, That *Magna Charta* was, by Reaſon of his Nonage, Void, and might be Cancelled, came under Examination in Parliament, where he was juſtly, and according to Law, Convicted and Condemned by his Peers, in open Parliament, to be **Degraded** of that Dignity of Earl of *Kent*, which he had obtained as a Reward, for his perfidious Counſel: A Strange! and Mild Puniſhment, for ſuch an **Enormous Offender.**

SECT. VI.

THE Biſhop having now obtained the Exerciſe of the Regal Power, Removed *Ranulph de Breton*, Treaſurer of the Houſhold, and, in his Room, placed near him, his Kinſman *Peter de Rivallis*, and made *Stephen de Segrave*, another Foreigner, Chief Juſticiar, and *Robert de Paſſelu*, a Foreigner, Treaſurer, and the Great Seal he delivered to his Creature *Ralph de Neville*, an *Engliſhman*, as Chancellor, who was to execute that great Office, as the Biſhop's Deputy. He alſo Invited over great Numbers of Foreigners, to whom he gave all the good Places at Court, and elſewhere, diſplacing the King's Natural *Engliſh* Subjects, to make Room for theſe *Frenchmen*; after which, the great Lords and Commoners ſignified no more in the Counſels, than ſo many Cyphers, to ſay, *Amen*, to what the Foreign Miniſters had before Projected and Counſelled.

The

The Queſtions afterwards Controverted, were;

I. *Whether the Regal Power in Government, ſhould be Abſolute and Arbitrary, or Limitted by the Conſtitution, and by the Antient Laws of the Land, ſpecified in* Magna Charta?

II. *Whether the King ſhould Adminiſter his Government, by the Advice of Foreign Counſellors, Rejecting and Deſpiſing the Native Subjects of* England?

Theſe being the Controverſies, the Lords and Great Men **Aſſociated**, and Reſolved firſt of all, to uſe all fair Means to *Reform* theſe illegal Proceedings, and recover the Conſtitution, and, for that Purpoſe, deputed *Richard Strongbow*, the Marſhal, Earl of *Pembroke*, and ſome other Lords, to attend, and petition the King, to redreſs their Grievances.

The Marſhal, and thoſe Lords, repreſented to the King, *That his Calling in, and employing the* French, *and other Foreigners, was a Breach of the* Engliſh *Laws and Liberties*; and requeſted, *That thoſe Strangers might be* Removed; declaring, *That the* Engliſh *would be neceſſitated, to* withdraw *from his Counſels, during ſuch Time, as he truſted Strangers.*

To which, the Biſhop (being Prime Miniſter) did, in the King's Preſence, Imperiouſly reply, *That the King might call in ſuch, and ſo many* **Foreigners** *as he pleaſed, to defend him, and his Crown and Dignity, and to reduce his proud and rebellious Subjects to Obedience.*

This haughty Anſwer widen'd the Breach, and united the Lords in a cloſer *Aſſociation*; whereupon the King ſummoned a Parliament to meet at *Weſtminſter*; but Foreign *Frenchmen*, often landing with Horſe and Arms, with whom the King, whitherſoever he went, was inviron'd; and all Buſineſs, being managed as they ordered, the Aſſociated Lords and Commons, inſtead of Meeting at *Weſtminſter*, ſent the King a **Meſſage**, *That unleſs the Biſhop of* Wincheſter *and his* Frenchmen, *were removed from his Preſence and Counſels, they would,* by Force *expel him, and thoſe Foreigners out of the Kingdom, and proceed to* Create *a new King.*

The

The Boldneſs of this **Meſſage** would have wrought ſome Compliance in the flexible King, whoſe Mind had his Father King *John*'s Calamities in ſome faint Remembrance, if the Foreigners had not prevented it, by infuſing more Spirit and Reſolution.

SECT. VIII.

THE potent Biſhop, who poſſeſſed not only great Riches of his own, but the Kingdom's Revenues, did, in this Emergency, exert himſelf, by ſhewing the King, *That as he* (the Biſhop) *had* **Conducted** *the Emperor's Affairs in the Eaſt, and made the* Saracens, *and other Nations feel the Effects of his Counſels, ſo he would now give the King* Advice *that would be ſound and effectual*; which Counſel was, *That this* **Meſſage** *was plain Treaſon*, and that his Majeſty's beſt Courſe would be, *to treat the Aſſociated Lords and Commons as* **Traytors,** *and to make* War *upon them, and* **give** *their Caſtles and Lands to the* Frenchmen, *who would prove Subjects more faithful and obedient*; promiſing *to bring over ſuch Numbers, as, together with the* Engliſh *that might be hired to join them, would compoſe an* **Army** *ſufficient for the Undertaking.*

This Counſel, ſeeming plauſible, and ſuiting the King's Inclinations, was conceded to.

The King's Foreign Miniſters, to make a Beginning, and try how their Counſels would operate, did, in the firſt Place, **diſſeize** *Gilbert de Baſſet*, and - - - - - *Steward*, of their Caſtles and Lands, giving the ſame to the *French* Foreigners; and upon *Baſſet* and *Steward*'s Complaints to the King, for taking from them their Freeholds, they were called **Traytors**, and otherwiſe Mal-treated; inſomuch, that when any Man ſought Remedy by Law, the *French* Miniſters would taunt him, ſaying, *What did their Laws, or Statutes, or Cuſtoms of the Kingdom, Concern them? they Valued them not!*

SECT.

SECT. IX.

THE cunning Biſhop, to gain Time for the Arrival of more *French*, cauſed a Parliament to be ſummoned at *Weſtminſter*; to which the Aſſociated Lords and Commons, to avoid the Power and Malice of the Foreign Miniſters and the *French*, by whom the King was, in a warlike Manner, guarded, reſolved to come well attended; but *Strongbow*, the Earl Marſhal, having Notice from his Siſter, the Counteſs of *Cornwall*, how the *French* had reſolved to ſurprize and aſſault his perſon, withdrew to his Caſtles in *South-Wales*.

When this Parliament met, nothing was done, becauſe the Foreign Miniſters, in Violation and direct Breach of this Conſtitution, had wilfully and deſignedly omitted to ſend to ſome of the Aſſociated Lords, their *Writs of Summons*, to call them to his Parliament; by which Treatment it was Alledged, *Thoſe Lords were treated*, and condemned by Implication, *as Traytors*, without any Tryal or Judgment of their *Peers*.

The Biſhop having gained Time, he, according to his Engagement, brought over the Foreign Mercenaries, with which Army the King made War upon *Richard Strongbow*, the Earl Marſhal, and the Aſſociated Lords, taking what Caſtles of theirs he could, and burning their Houſes, *&c.* and, in order to weaken them, the Foreign Miniſters, with ſo ſmall a Sum as 1000 Marks, bought off the Earls of *Cheſter* and *Lincoln*, who, for that mean Reward, contented themſelves to deſert their Countrymen, and truckle under Foreigners: But in all the Skirmiſhes (for they never came to a general Battle) the *French* Forces were worſted, and the King was obliged to retire, with Loſs and Diſhonour; and although his Perſon happened once to fall into his Subjects Power, yet *Strongbow*, the Marſhal, declined the Advantage, contenting himſelf with taking the King's Baggage and Treaſures.

SECT. X.

THE *French* Miniſters deſpairing to reduce, by open Force, the Potent Marſhal, and Aſſociated Lords, reſorted to ſecret Fraud, and plotted how by Treachery to cut him off; the Scheme was thus laid: *Strongbow*, the Earl Marſhal, having many Caſtles and Territories in *Ireland*, the Foreign Miniſters rightly projected, That if they could ſtir up the Wild *Iriſh* to make **War** upon him, and pillage and deſtroy his Tenants in that Country, that that Provocation would draw the Marſhal from *Wales*, to defend his own Lands in *Ireland*; and that the Great Men there, being, in a Manner, become *Iriſh*, though of *Engliſh* Extraction, would be brought into Meaſures to enſnare and deſtroy the Marſhal's Perſon, upon a Promiſe, *That they, for a Reward, ſhould have the Marſhal's great Eſtate, in Lands, given to, and divided amongſt them.*

This being the Plot, it appeared probable; and, in order to execute it, Letters were framed and directed, and ſent to *Maurice Fitz-Gerald*, Chief Juſticiar, and other Great Men in *Ireland*.

To which the King, and Eleven *French* Miniſters, ſubſcribed their Names, and ſet their Seals, by which Letters it was repreſented, *That* Richard Strongbow, *Earl Marſhal of* England, *was, for his* **Treaſon**, *by the Judgment of the King's Court* (Foreigners made Judges) *Baniſhed, and Ouſted of all his Patrimony and Poſſeſſions, that he ſtill continued in Rebellion*; They therefore were required, *if the Marſhal ſhould come into* Ireland, *to* **ſeize** *him, and bring him to the King dead or alive*; *that, for their Care therein, the King Granted* (or would Grant) *the Inheritance of all the Earl's Lands in* Ireland, *being then in his Diſpoſal, to be ſhared amongſt them.*

The **Avarice** of the *Iriſh* Great Men, ſuperſeding all Rules of Honour and Honeſty, they wrote back, *That if the King's* Promiſe *were confirmed to them under the Great Seal, they would do their utmoſt to effect the Buſineſs.*

The Foreign Miniſters, therefore, procured the Great Seal to be taken from the Chancellor (the Biſhop of *Cheſter*) who held the

the ſame no otherwiſe, than as Deputy to the Biſhop of *Wincheſter*, and affixed it to the King's Charter, wherein every particular *Iriſhman*'s Share was Expreſſed.

This wicked Plot took Effect ſucceſsfully; for the *Iriſh* Great Men cauſed an Army of **Wild Iriſh** to make Inroads, and Devaſtations, on the Earl Marſhal's Lands and Eſtates; and that drew him from *Wales*, to *Ireland*, where the Great Men, ſeemingly, Join'd and Aſſiſted him; but privately *concerted* with the *Iriſh* a Stratagem, whereby the Marſhal was, under Pretence of a Treaty, drawn into a Snare, and there ſuddenly Aſſaulted; and whilſt he Manfully fought his Enemies before his Face, an **Iriſhman** behind him, baſely gave him, in the Back, a **Mortal** Wound, of which, in a few Days, he died. This *Richard Strongbow*, was the Son of *William Strongbow*, the Great Earl Marſhal, who reſcued this King, in his Infancy, from imminent Danger, and ſet on his Head, the Crown of *England*.

SECT. XI.

THIS moſt nefarious **Murder**, proved of no Advantage, either to the *Iriſh* Great Men, or to the Foreign Miniſters; for a conſiderable Time elapſed between the Projection, and the Execution, during which, the **Fryers**, *Predicants*, and *Minorites*, whom the King uſed to Reverence, and Hearken to, Sided with the aſſociated Barons, and Remonſtrated to his Majeſty, *That he had, by Evil Counſel, driven his natural Subjects, without Judgment of their Peers, into Baniſhment, Burned their Manor Houſes, Cut down their Woods, and Deſtroy'd their Ponds, and Rejected their Service, Treating them with Reproaches due to* **Traytors**; *and, therefore, they humbly deſired him to be Reconciled to his* Engliſh *Nobility and Commonalty*: To which the Biſhop of *Wincheſter*, in the King's Preſence, Anſwered, *That the Peers of* England, *were not ſuch as were in* France; *and, therefore, the King might Judge, and Condemn, and Baniſh them, by Judges of his own Appointing.*

This Anſwer ſtrengthened the Aſſociation, and cauſed the *Engliſh* Biſhops to Join with the *Lords Temporal*, inſomuch, that the King having now perfectly *alienated* himſelf from his Natural Subjects, he, and his Foreign Miniſters, ſtood by themſelves,

ſelves, not only without Expectation of Aſſiſtance, but in Fear of being by the whole Nation treated as **Enemies.**

The whole Body of *Engliſh* Biſhops thereupon taking Courage, Addreſſed the King, repreſenting to him, That the *French* Miniſters were Pernicious and Dangerous Men, becauſe they Hated and Deſpiſed the *Engliſh*, Treating them as Traytors, and thereby Turning the **King's Heart** from the Love of the Nation, and the **Hearts** of the Nation from Loving the King, *i. e.* To Hate one another; and that the *French* Foreigners *delighted* in War, to the Intent, to grow Rich by Troubles and Confiſcations; and that, for that End, they Confounded and Perverted the **Law** of the Land; and, therefore, they prayed his Majeſty to **Govern**, for the future, by his own Native Subjects, according to the Antient Conſtitution and Cuſtom of *England.*

The King ſeeing himſelf, in a manner, Abandoned to be a King only of *French* Mercenaries, did, in ſome ſhort Time after, turn them off, and exacted a ſevere Account of thoſe *Foreigners*, returning upon them, the opprobrious Name of **Wicked Traytors**: and, after having ſqueezed out of them great Sums, diſmiſſed them, charging them never to **ſee his Face** more, and particularly *Rivallis* and *Segrave*, were deeply fined.

SECT. XII.

IN ſome ſhort Time after, a free Parliament was held at *Glouceſter*; in which *Edmund* Archbiſhop of *Canterbury* cauſed a **Copy** of the Letter, concerning the Treachery by which the Marſhal *Strongbow* had been **Murdered**, to be produced, and read in full Parliament, at which the whole Aſſembly **Wept**, and the King *Confeſſed, That, being Compaſſed by his* French *Miniſters, he had commanded his Seal to be put to ſome Letters that were Preſented to him*; but Affirmed, *He* never heard, *or knew the* Contents *of them.*

This extraordinary Tranſaction is here inſerted, to ſhew, not only how the **Wicked Foreigners** were Diſappointed, but how the *Iriſh* Great Men got no other Reward, than the Remorſe and Puniſhment due to a Crime ſo horrible, as was this baſe **Murder**; and, moreover, to ſhew how Things are ſometimes

Impoſed

Impoſed on Princes, that are, in themſelves, Improbable, and almoſt Incredible.

SECT. XIII.

IN this Place it may be proper to repreſent the Proceedings between this King and his Parliament, in Relation to granting Aids and Subſidies, in which thoſe Parliaments did, at Four ſeveral diſtant Times, abſolutely refuſe to give the King any Aids at all.

I. At a Parliament held in *January*, 1237. (*H.* III.) the King demanded a Supply, offering, *That the ſame ſhould be Collected and Applied to the publick Uſes, by ſuch Perſons as the Parliament ſhould appoint*: The Parliament denied to grant any Supply, becauſe *the King would not Remove, or Puniſh any one of the Kingdom's Enemies*; but after, upon his ſolemn Promiſe *Inviolably to obſerve* Magna Charta, they gave him a Supply of the 30th Part of their Goods.

II. The King demanded *an Aid of the Parliament held in* February, 1243. (27 H. III.) *to make War, and Recover what he called his Rights*; but the ſame was abſolutely denied, becauſe *the King had not performed his laſt Promiſe to obſerve* Magna Charta.

III. The King likewiſe demanded, *A Pecuniary Aid of the Parliament held in* February, 1248. (33 H. III.) but the ſame was abſolutely denied, becauſe *of his Majeſty's great Liberality to Foreigners, and his Contempt of his Native Subjects.*

IV. The Parliament held ſoon after *Eaſter*, 1255, denied to grant any Supply, becauſe *the King refuſed to permit Three great Officers to be Choſen by the Parliament.*

SECT. XIV.

BUT notwithſtanding all the Proceedings before mentioned, the King, finding his Power limitted by the Conſtitution, Relapſed back into the Counſel and Conduct of the *French* Miniſters; for, in a ſhort Time after, *Rivallis* and *Segrave* were again received into high Account, and *Peter de Rupibus*, Biſhop

of *Winton*, was made Chief Juſticiar: which **Relapſe** occaſion'd new Strugglings between the King and his *Engliſh* Subjects, too long to be enumerated here.

In which Controverſies, the Lords and Commons ſet at their Head *Simon Montfort*, Earl of *Leiceſter*, a Man equal to Great *Strongbow*, the Marſhal, in Courage, Policy, and Reputation; And theſe continual Fluctuations and Uneaſineſſes, bring us to the Parliament held at *Oxford*, in the 42d Year of this King's Reign, at which a Statute, in order to Reform all **Miſgovernment**, was ſolemnly made, called, *The Proviſions of* Oxford; by which it was Enacted;

I. *That* Magna Charta *ſhould be inviolably obſerved, as well by the King, as his Officers.*

II. *That Twenty-four Great Men ſhould be named, Twelve by the King, and Twelve by the Parliament, who ſhould have a Temporary Power*, viz. *Yearly, during Twelve Years, to appoint a Juſticiar, Juſtices, Chancellors, Treaſurers, and other Officers, and take Care to ſee* **Magna Charta** *obſerved.*

And, for the preventing all Uncertainties, and Breaches of it, the King, and the Prince Royal his Son, took ſolemn **Oaths** on the *Evangeliſts*, to Obſerve and **perform** this new Temporary Scheme of Government.

The firſt Step in the Execution of theſe Proviſions of *Oxford*, that was taken, was the **ſending Home** the *French* Mercenaries, and other Foreigners, which the Barons, to the People's univerſal Satisfaction, effectually performed, after having firſt ſtripped them of what **Money** could be found on them, and Appropriating the ſame to the *Publick Service*.

SECT. XV.

BUT the King, by the Inſtigation of a *Frenchman*, *William de Valence*, and other Foreigners, whom he called to him again privately, made Proviſions of **Forces** from Abroad, and in Confidence of that Aſſiſtance, his Majeſty grew weary of this New Sort of Government, called a Parliament about the 44th Year of his Reign, to meet at *London*, and there openly *Renounced* or *Abrogated*

Abrogated the Statute called, *The Proviſions of* Oxford, declaring to the Lords and Commons, *That he would* **Comply** *with it no longer, but that, from henceforth, every one ſhould prepare for his own Defence*; or, in other Words, That *they were not to wonder, That, if Truſting no longer in their Counſels, he had ſought for Redreſs elſewhere.*

This was Plain-Dealing, for it amounted to the **Drawing** the Sword, and Throwing away the *Scabbard*; each Side therefore, from this Time, Reſorted to thoſe **Means**, which might ſtrengthen them againſt the Day, when the Queſtion, now plain between them, ſhould come to a Tryal; that is, *Whether this Conſtitution ſhould be Eſtabliſhed or Aboliſhed?*

Various were the Struggles on the Part of the King, to acquire and compaſs an Arbitrary Power; and on the Part of the Lords and Commons, under the Leading of *Simon Montfort*, Earl of *Leiceſter*, and *Gilbert de Clare*, Earl of *Glouceſter*, and other Barons, to defend their Hereditary Rights, Liberties, and Privileges, and this Conſtitution.

At laſt, in the 48th Year of this King's Reign, 1263. the Controverſies between the King and the Two Eſtates of Lords and Commons, came to a **Tryal**, by a general Battle at *Lewes* in *Suſſex*, where the Barons became Victorious, and took into their Cuſtody the *King and the Prince*, and, for a conſiderable Time, kept them *Priſoners*; but without offering to their Perſons, any other Violence.

SECT. XVI.

PROPITIOUS it was for the King and the Prince, that the Great Men differed amongſt themſelves; inſomuch, that *Glouceſter* ſeparated from *Leiceſter*, and retired to *Ludlow* in the Marches of *Wales*; which drew *Leiceſter* after him, to *Hereford*, to reduce him (if poſſible) by a Treaty; but there *Glouceſter*, without any Intention to aid or aſſiſt an **Arbitrary** Government, but upon private Stipulations between him and the Prince, whereby the Prince engaged, and undertook, in Caſe of Victory over *Leiceſter*, &c. to reſtore the Conſtitution and the Government, by the antient Laws of the Kingdom, to *baniſh* all Foreigners from the Counſels, and not to ſuffer them to have the Cuſtody of any Caſtles, nor any Share in the Government, and to make

Magna

Magna Charta the Rule of Government; and the Prince took a ſolemn Oath, to perform this Engagement; and, upon thoſe Conditions, and in Confidence of their Performance, he the ſaid Earl of *Glouceſter* joined with *Roger Mortimer*, Owner of *Wigmore-Caſtle*, and a Potent Lord Marcher, in contriving and meditating the Prince's Deliverance, and at laſt they effected his Eſcape from *Hereford* to *Wigmore*.

The Prince being now at Liberty, and having joined the Forces under *Glouceſter* and *Mortimer*; they raiſed what more Forces they could, and, with incredible Celerity and Courage, followed *Leiceſter* (who retired from *Hereford*) and in ſeveral Parts became Victorious; and at laſt, when they approached near *Eveſham*, where *Leiceſter* was, they parted their Army into three Diviſions; one led by *Mortimer*, the ſecond by *Glouceſter*, and the third by the Prince, and overtook, and, in a Manner, **ſurpriſed** *Leiceſter* at *Eveſham*, where they fought and killed him in Battle, routed the Aſſociated Lords, and **reſcued** the King, then in *Leiceſter*'s Army, from his Impriſonment.

This Victory being obtained, about the 5th of *Auguſt*, 1265. the King was adviſed to follow his Blow, before things cool'd; for Victory never wants Aſſiſtants; and accordingly he ſummoned a Parliament, which met at *Wincheſter*, the 8th of *September*, within 34 Days after the Battle, where the Parliament, being in hot Blood, worſhipped the **Victors**, and did whatſoever the King, and his **Foreign** Counſellors, directed, or even Wiſhed; in particular, they confiſcated (then termed **Diſinherited**) the Eſtates of the *Beaten* Party, and repealed the Proviſions of *Oxford*, whereby the King was (as he thought) looſed from his Obligations to *obſerve* the antient Laws of the Land, and particularly *Magna Charta*; all which were but the natural Fruits of a Victory ſo deciſive.

SECT. XVII.

BUT notwithſtanding all this Succeſs, againſt the Conſtitution, the broken Remains of the *Aſſociated Lords*, re-aſſembled, and took Courage, and poſſeſſed themſelves of the Iſle of *Ely*, in which Faſtneſs they made a Stand and **Defence**, which laſted two Years, and could not be, nor were, without much Trouble, **Reduced.**

The

The Earl of *Glouceſter* finding no Performance of the Prince's Promiſes or Engagements, or of his Oath to perform them, and that his own Efforts to deliver the Prince and beat down *Leiceſter*, did, at the ſame Time, ſubject himſelf, and his Country, to the **Arbitrary** Diſpoſition of Foreign Counſellors, *Repented*, and withdrew from Court into the Marches of *Wales*, and ſet himſelf at the Head of what **Forces** he could muſter, and from thence ſent a Petition to the King, Praying him, *to* Diſmiſs *the Foreigners, and that* **Magna Charta** *might be re-eſtabliſhed*; but receiving a cold Anſwer, the Earl marched with his Forces to *London*; to which Place he was (without Doubt) *Invited*, and was there joyfully received: He fortified the City, and made ſuch a Stand, in **Defence** of his Country's Liberties, that the King, with his Army, contented themſelves to lie Encamped, for above two Months, at *Stratford-Bow*, within two or three Miles of *London*, without Hazarding, with the Earl, another Battle, although the Earl, ſeveral Times, marched out with his Forces to give the Opportunity.

Glouceſter having thus beſtirred himſelf, and having on his Side the **Popular** Inclinations, the Event and Concluſion was, *That the* Aſſociated *Lords and Commons* (the Beaten) *were, by the Statute of* Kenelworth, *and other Compacts with the King, upon their paying ſmall Compoſitions*, viz. *Five Years Purchaſe of their Lands in 3 Years Time*, Reſtored *to their Eſtates, and all Men to their Rights*; and ſoon after, the Foreigners were ſent Home, and **Magna Charta** was once more Confirmed, and Eſtabliſhed: And thus, at laſt, this King's Breaches of the Conſtitution, were, in the End (after Forty Years Struggle) made up and repaired.

But hard it was, that theſe Artificers or Patriots ſhould themſelves bear the Charges and Expences, by whom ſo neceſſary, ſo beneficial and glorious a *Reparation* was Effected.

SECT. XVIII.

IT is, from the Tranſactions of this Reign, apparent, That the Lords and Commons were, in their Behaviour to the King's Perſon, directed by that famous Diſtinction between his Natu-

ral and Politick Capacity; for all the **Diſturbance** they gave, did not concern the King's Perſon: for him they Reverʼd; but was managed only, to Remove the Miniſters of **Arbitrary** Power, who miſled him into the Practice of it: And this is the more Evident, from the laudable Rule, within which the Earl Marſhal and the Aſſociated Lords confinʼd themſelves, *viz. That they would hurt no Body, but only the evil Counſellors, by whom they had been illegally oppreſſed, and againſt whom they could obtain* no other *Redreſs.*

BREACHES

BREACHES IN THE REIGN OF KING EDWARD I.

CHAP. VI.

SECT. I.

THIS King was a Magnanimous and Victorious Prince, in whom was Compoſed, an *Equal Mixture* of Valour and Wiſdom, and therefore his Advances towards a **Breach** of the Conſtitution, proceeded more from a paſſionate **Miſtake**, than from an Arbitrary Deſign to Invade the Conſtitution. The Manner thereof, was thus occaſioned.

The King had Compleated his Conqueſt of *Wales*, and effectually Annexed that vexatious Principality to this Kingdom: he had likewiſe *Conquered*, and very near effectually **United** *Scotland* to *England*, and placed therein his Deputy Governors, and

and other Officers, and an **Army**, and Garriſons under their Command, to ſupport them; but in the midſt of theſe Succeſſes, the *French* King, at the Inſtigation of a Remnant of *Scots* that refuſed to ſubmit, not only Invaded *Gaſcony*, and other of King *Edward*'s Dominions in *France*, but Encroached on, and Oppreſſed, *England's* **Ally**, *Guy* Earl of *Flanders*.

This Conjuncture made it neceſſary to provide Two freſh Armies, the one to aſſiſt the Earl of *Flanders*, which lying nearer *England*, King *Edward* intended to Command in Perſon, and the other to ſend into *Gaſcony* under his Lieutenants.

For this Purpoſe, the King ſummoned his Nobility and Gentry, and *Commanded* them, by a Time prefixed, *to* **Arm** *themſelves, and Compoſe an Army, and to Contribute to the Charges of the Expedition, and to go into* Gaſcony, *for the Recovery and Defence of that Country.*

But the *Nobility* and Gentry, by *Humphry Bohun*, Earl of *Hereford*, and High Conſtable, and *Hugh Bigot*, Earl of *Norfolk*, and Earl *Marſhal*, whom they ſet at their Head, *Inſiſted*, That the **Service** being contrary to that Part of the Conſtitution, which ſays, *No Man ſhall be Exil'd*; and to that Part which ſays, *No Aids ſhould be Impoſed or Levied, but by a Grant thereof in Parliament*; they therefore refuſed to **Obey**; but, however, to teſtify their Affectionate Reſpect to his Majeſty's Perſon, they offered, *That if the King would, in* **Perſon**, *Command the Army in* Gaſcoigne, *they would readily Arm, and Attend him; and the Earl* Marſhal *would, according to his Place, lead the Van.*

The King's Reſentment, nevertheleſs, broke out into ſuch Expreſſions, as were *Menacing* and Terrible, ſaying, *They ſhould* **Go**, *or* **Hang**; To which the Earl *Marſhal*, inſiſting on his Liberty, and the Law of the Land, Reply'd, *That he would neither* **Go**, *nor* **Hang**.

SECT.

SECT. II.

THE Nobility, in great Diſcontent and Fear, withdrew, and from this Time ſtood in Terms of Oppoſition, upon their Guard, to defend the Conſtitution, and their Hereditary Privileges: And the King, upon his own Strength (without them) was able to carry into *Flanders*, but a ſmall Army, and to ſend a leſs into *Gaſcony*.

During the King's Abſence in *Flanders*, a private *Scots* Gentleman, Sir *William Wallace*, obſerving, that the *Scotiſh* Nobility were either Impriſoned, or Intimidated, did, with an *Heroick Courage*, Animate and Aſſemble his Countrymen, and, as their Leader, he manfully fought, and beat out the *Engliſh*, and, in effect, *Reſcued* Scotland.

SECT. III.

KING *Edward* finding, that the Oppoſition and Strugglings of the *Engliſh*, who claimed and contended for a Reſtoration of that Clauſe touching the *Impoſing Taxes*, which had been from the true *Magna Charta*, clandeſtinely ſubſtracted, that his Royal Strength and Power was much weakened, and, in a manner, Departed; His Majeſty, with the greateſt Wiſdom, took effectual Care, to Reſtore them to their Liberties; and Himſelf to their Love and Affection: And for that Purpoſe He, in the 25th Year of his Reign, gave the Royal Aſſent, to an Act of Parliament, Intitled, *A Confirmation of the Charter of the Liberties of* England: In which, that moſt important Article, touching the Raiſing Money, which, by the ſiniſter Practice of *Hubert de Burgo*, had been Secretly, and Artfully, omitted out of the *Magna Charta* of King *John*, was Reſtored, and is thus expreſſed, *That no manner of Aids or Taxes, ſhould be taken, for any manner of Buſineſs, or Occaſions, whatſoever, but by the common Conſent of the Realm, in Parliament, and for the common Profit thereof.*

And, becauſe ſome Scruples and Doubts were ſtill raiſed, the King, in the 34th Year of his Reign, gave the Royal Aſſent to another Act of Parliament, Intitled, *Statutum de Tallagio*

non Concedendo: By which it was Enacted and Declared thus, *Nullum Tallagium, vel Auxilium, per nos vel Heredes noſtros, in Regno noſtro ponatur, ſeu Levetur, ſine Voluntate & Aſſenſu Epiſcoporum, Comitum, Baronum, Militum, Burgenſium, & aliorum Liberorum Communium, de Regno noſtro*; which in *Engliſh* is, *That no Tax, or Aid, ſhall be Impoſed or Levied, by us, or our Heirs, in our Realm, without the Will and Conſent of the Lords and Knights, Burgeſſes, and other Freemen of our Kingdom*, i. e. The Lords and Commons, in Parliament Aſſembled.

The Words of this Statute are *Plain*, that no ſuch Conſent could be had, but in Parliament: They are alſo *Abſolute*, without Saving or Reſtriction; for they Exclude the Levying of Money any other Way, for any Purpoſe whatſoever; and therefore the *hard Treatment* which this Statute met with, in later Times, deſerves ſpecial Remembrance.

I. The Words of it appeared, for the Space of 331 Years, ſo certain, and clear, from any Ambiguity, that no Doubt or Queſtion, about the Right or Power of Impoſing Taxes, ever appeared, during that long Series of Time. This Statute was the **Wall**, that defended the People, from the Raging Waves of **Arbitrary** Power, as the Sea Walls, defend *Holland* from Inundations, when Spring Tides, and Tempeſts, raiſe and ſwell the Seas, much higher than the Surface of that Low Country; The cutting down, therefore, of this *Wall*, was as Criminal in *Britain*, as the cutting down the *Sea Walls*, to drown *Holland*, is Criminal in that Country (i. e. It was High Treaſon).

II. That in the Year 1636, this plain and poſitive Statute, ſuffered Martyrdom, when the Queſtion, Whether King *Charles* I. could Impoſe the Tax of Ship-Money, for the Defence of the Kingdom, came into Debate; for his Judges, in order to Introduce an Arbitrary Power in the Crown, to Levy Money, treated this Statute with *Imperious Conſtructions*;

I. That although the Negative Words were *General*, yet the Makers, never intended they ſhould be **Abſolutely** General (i. e. The Makers had an *Intention* contrary to their Words).

II. That although the Words ſay indefinitely, *No Tax or Aid ſhall be Impoſed, without Conſent of Parliament*, yet thoſe Words meant, *That no* Unlawful *Tax, or Aid, ſhould be Impoſed*:

poſed: Whereas no one, beſides thoſe Judges, could ſee, in the Words, any ſuch Diſtinction.

III. That the Impoſing the Ship-Money, on each County, to provide a Ship, with Men, Arms, Proviſions and Wages, to defend the Kingdom; was a **Service**, and not a Tax or Aid.

IV. That the Ship-Money, was a **Contribution**, and not a Tax.

And for thoſe *ſtrong Reaſons*, the Judges laid this Statute, as a Nugatory or Uſeleſs Thing, out of their Way:

But, nevertheleſs, this Proceeding, was a plain deſerting the Judicial, and aſſuming a Legiſlative Power; from which may be deduced theſe Inferences.

I. That this **Power**, of Treating the Statute-Law, which the Judges aſſumed, miſled the good Intentions of King *Charles* I. (who made and unmade thoſe Judges) into a Belief, *That he had in his own Hands, Legal* **Means**, *to ſupply himſelf with Money*; and that having ſufficient Power, to furniſh himſelf with ſuch Judges; his Majeſty's Miniſters adviſed him, *To lay aſide that Part of the* Kingly Office, *which required the Aſſembling Parliaments*; and that theſe illegal Proceedings, of the King's Miniſters, and their purſuing the Miſtake, raiſed thoſe tempeſtuous Contentions, which ended, in overwhelming both King and People, as will appear, when thoſe Matters come to be repreſented.

II. That whenever the plain and expreſs Words of *Acts of Parliament*, either in publick or private Affairs, ſhall hereafter happen to be treated, with the like Conſtructions, it may be concluded, *The Sufferings, of this moſt important Statute, are coming upon them.*

Another Suffering, of this moſt Material Act of Parliament, was, that the Parliament Roll, on which it was entred, hath been ſuppreſſed, and the Record of it, is not now to be found: And it is more than probable, that the Record of this Statute, was one of thoſe Records, touching the State and Government of this Kingdom; which King *Richard* II. cauſed to be ſubſtracted,

and

and imbezeled, and which was one of the Charges, objected to his Government; as hereafter will be related.

But to return to the Reign of King *Edward* I.

SECT. IV.

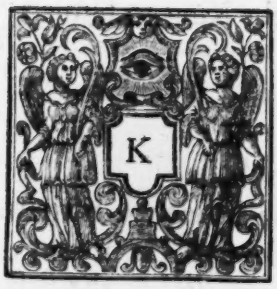
AFTER theſe Reconciliations, between this great King and his People, his Majeſty became ſtrong, with his Peoples *united Aſſiſtance*, and carried into *Scotland*, powerful Armies, beat down all Oppoſition, and ſubdued that Country.

But though a Union of the two Kingdoms was, by Providence, determined, yet the Time of it did not, for the Space of 400 Years after, come to be fulfilled: and then the compleating it, was not done by placing the King of *England*, by Conqueſt or Marriage, on the Throne of *Scotland*; but, contrary to all Expectation at that Time, it commenced in the Year 1603, at the placing the King of *Scots*, in Vertue of a Marriage, on the Throne of *England*; and was at length accompliſhed and compleated, under the Auſpicious and Glorious Part of Queen *Anne*'s Reign, in the Year 1707.

BREACHES IN THE REIGN OF KING EDWARD II.

CHAP. VII.

SECT. I.



KING *Edward* II. ſucceeded to the Crown at the Age of 23 Years, when the Nation, by the good Government of his Victorious Father, King *Edward* I. had arrived to a great Height of Glory: but though this King's Reign continued to the 20th Year, and to the 43d of his Age, yet his Adminiſtration may be repreſented, as the Government of **Favourites**, firſt of *Pierce Gaveſton*, and after of the two *Spencers*, *Father* and *Son*, who, in all Things, behaved rather as *Regents*, than Miniſters: For the King did, in a Manner, abandon his Regal Power, and, inſtead of *Governing*, ſuffered his People, and himſelf too, to be by them *Governed*.

The Favourites having thus accroached the Royal Authority, they **ſpoiled** the Crown of its Jewels and Revenues, Impoveriſhed their Maſter, and loaded themſelves with Honours and Riches, immeaſurably: the Conſequences whereof were, Envy and perpetual Diſcords and Struggles between the Lords and Commons, and theſe *Regents*.

Theſe Favourites, to keep themſelves in Power, did (as Minions always do) beſiege the King's *Perſon*; not permitting Acceſs, without their Leave; for they well underſtood, *That as long as they could keep to themſelves his Majeſty's Perſon, no Man could interfere with the Governing Power they were poſſeſſed of*; for this Reaſon, therefore, they diſſuaded or eluded all **Martial** Atchievements, which, they rightly apprehended, would neceſſarily introduce other active Men, to *ſhare* in the National Counſels and Reſolutions.

Theſe Diſcontents enabled the beaten and **dejected** *Scots*, not only to **reſcue**, from under the *Engliſh* Dominion, their own Country *Scotland*, which this King's Father left in a manner conquered, but to harraſs, and plunder, and deſtroy the five Northern Counties of *England*, in ſuch a diſhonourable and long Series of Succeſſes, as were never before or ſince heard of.

At length the Lords and Commons, became ſo diſcontented and incenſed, that they oftentimes reſorted to Arms, and revived thoſe Wars, commonly called the *Barons Wars*, not as Rebels or Traitors to the King, but to **diſturb** and remove thoſe **Arbitrary** Favourite-Regents, and to reſtore the King to himſelf, and to his Authority.

SECT. II.

IN the Courſe of theſe Contentions, there happened various Turns and Viciſſitudes; ſometimes the Lords and Commons; and at other Times, the Favourites, prevailing: *When* the firſt prevailed, and the King himſelf, as well as his Minions, fell under their Power, Loyal Applications to the King's Perſon, and Parliamentary Redreſſes of Grievances, and gentle Baniſhments of evil Miniſters, were the End and Fruits, of all their **Warlike Efforts**; but when the Favourite Regents (the two *Spencers*) prevailed, their Fear and Revenge iſſued into terrible Blood-

Bloodſhed, and Slaughters of the Great Lords and their Adherents.

Theſe Proceedings, and the Calamities conſequent upon them, looking like a Curſory Repreſentation, It becomes neceſſary to State the Particulars, which Compoſed that **Torrent** of Male Adminiſtrations, in which this King, as well as his Favourites, were at laſt Inveloped and Overwhelmed.

SECT. III.

AS for *Peirce Gaveſton*, whoſe Regency commenced almoſt with the King's Acceſſion, and continued, in Effect, during the firſt Five Years; He was a *French* Native of *Gaſcoign*, and being young, was placed as a Gentleman, or Servant, to this King, whilſt he was Prince of *Wales*; and being of a handſome Mien, and Sprightly, he inſinuated himſelf, ſo far into the Prince's Affections, that *Gaveſton* led him into what Extravagancies he pleaſed; of which the wiſe old King his Father, being apprized, and rightly apprehending what afterwards came to paſs, *viz. That this vicious Minion might, when the Prince ſucceeded, get into his Hands the very* **Government** *of the Nation*;

The old King therefore baniſhed this Minion into *France*, Cauſing him to abjure the Kingdom, and never more to return, and brought his Son alſo (the Prince of *Wales*) to ſwear, *Never to permit* Gaveſton *to return, or to receive him again into his Service.*

But the old King no ſooner ſlept with his Fathers, (and even before his Funeral) than theſe **Oaths** were forgotten, and *Peirce Gaveſton* boldly returned; And this King was ſo Tranſported with the Company of his old Favourite, that he immediately created him Earl of *Cornwall*, granting him, all the Lands and Revenues belonging to that Earldom; and, moreover, granted him the Lordſhip of the *Iſle of Man*, the Honours of *Barkhamſtead* and *Tickell*, and many other exorbitant Things; but, above all, the King **Delegated** into his Hands, the whole Adminiſtration of the Government.

The

The Lords ſtomaching theſe *provoking* Proceedings, demurr'd, and refuſed to perform the Ceremonies of this King's Coronation, until his Majeſty would firſt ſolemnly promiſe, to Baniſh *Gaveſton*; to which the King, rather than delay, or diſappoint the **Coronation** of himſelf, and of his Queen (the ſole Daughter of *France*) conſented to, agreed, and promiſed.

And yet, notwithſtanding this Diſcontent of the Lords, and this Promiſe, and Condeſcention of the King; the Malefactor *Gaveſton*, audaciouſly *appointed* himſelf to carry before the King, St. *Edward*'s Crown, and appeared at the Coronation, by the King's abſolute Command, in a *Splendor* exceeding all the Nobility; which made the Lords and Commons look upon themſelves as impoſed on, or contemned and deſpis'd.

SECT. IV.

GAVESTON, however, was *Baniſhed*, or rather Retired into *Ireland*, where the King aſſigned for his Maintenance, and Recompence, the whole Government and *Revenues* of that Country.

But the King, in the Abſence, and for Want, of his Favourite's Company, grew Melancholly; and therefore *Gaveſton*, in a ſhort Time, returned to *Cheſter*, whither the King went to receive him; and afterwards he (*Gaveſton*) **Governed** as Abſolutely, and more Inſolently, than before.

The Lords finding, that *Gaveſton* Ruled all, and that the King cared for no other Man's Company or Advice, and that no Buſineſs, without his Intervention and Permiſſion, could be Tranſacted or Diſpatched, they reſolved to **Drive** *Gaveſton* out of the Kingdom.

And accordingly an Act of Parliament paſſed in *September*, in the 5th Year of this King's Reign, 1311. by which it was Adjudged, *That* Gaveſton *had* aſſumed *Royal Power, in putting from the King good Officers, and placing about him Strangers*: *That he had ſo* Eſtranged *the King, from his People, that his Majeſty deſpiſed their Counſels*: *That King* Edward I. *had cauſed* Gaveſton *to* Abjure *the Kingdom for ever*: *And that the preſent*

preſent King had **Forſworn** *his Company for Ever*: And therefore it was **Enacted**, *That* Gaveſton *ſhould be for ever* Baniſhed *from all the King's Dominions; and that, if he ſhould, after* All Saints, *then next enſuing, be* found *in any of them, he ſhould be treated as a publick* **Enemy** *to the King and Kingdom.*

To this Act the King gave the Royal Aſſent, and *Gaveſton*, about *All Saints*, 1311. 5 *E.* II. Retired, as a *Baniſh'd* Man, into *France*, *Flanders*, *&c.*

SECT. V.

BUT the King, by *Gaveſton's* Procurement, had privately Signed an Inſtrument, whereby he made a Proteſtation, *That if that Act contained any thing, to the King's Prejudice, the ſame ſhould not be looked upon, as* Granted, *Reſerving to the King*, Power *to Correct the Act, as he ſhould find Cauſe*; which **Proteſtation** was kept ſecret, and not entred in the Parliament Rolls, 'till about One Year after.

Gaveſton fancied himſelf not ſafe Beyond-Sea, and upon the King's private *Invitation*, he, in leſs than Two Months, adventured again, to return into *England*, where his Majeſty, with all the Joy imaginable, received him, and retired with him, to keep a merry *Chriſtmas* at *York*.

At *York* a Declaration was publiſhed, to which the King *cauſed an Inferior Clerk, privately*, in the Preſence only of himſelf and *Gaveſton*, to **Affix** the Great Seal; whereby it was declared, *That* Gaveſton *Returned by the King's own immediate* Command: And his Majeſty therefore, commanded all his Subjects, to keep the Peace, i. e. Not to be diſquieted at *Gaveſton's* Return: It is probable, the **Favourite** imagined, *That this Declaration was, by the private Proteſtation, well enough warranted.*

The Lords and Commons, finding the Royal Mind irreclaimable, Aſſembled, and having choſen *Thomas Plantagenet*, Earl of *Lancaſter*, the King's Couſin *German*, *Captain General*, they ſent a reſpectful **Meſſage**, to the King at *York*, humbly requeſting, *That his Majeſty would pleaſe, either to Order* Gaveſton *to avoid the Kingdom, or Deliver him up to them.*

To which the King returned no Anſwer, but ſent *Gaveſton* to *Scarborough Caſtle*, in which, for his Defence and Safety, all Neceſſaries were before Stored and Provided, and of it, *Gaveſton*'s Countryman, a *Frenchman*, was made Governor; but the Lords, by a Siege, *Reduced* the Caſtle, and took *Gaveſton*, and at *Warwick* they, according to the Act of Parliament, treated him as a publick *Enemy*, that had Invaded the Kingdom; and, for that Reaſon, as ſuch, deſtroyed him, by **Chopping** off his Head.

The King, to ſhew his Reſentment, and, at the ſame Time, his Contempt of his People, Founded and Endowed an Abby at *Langley*, now called *Abbots Langley*, in *Hertfordſhire*, to pray for the Soul of *Peirce Gaveſton*, though he had been twice proſcribed, as a publick Enemy.

SECT. VI.

AFTER this, at a Parliament held 8 *Edw.* II. all Differences were, ſeemingly, Compoſed and Reconciled; and the King, for a ſhort Time, was pleaſed to Employ ſuch Perſons of Diſcretion and Ability, as his Parliament recommended, amongſt which, was one Sir *Hugh de le Diſpenſer*, the Son, who being, as was apprehended, a *Perſon* zealouſly averſe to all Government by **Favourites**, was, by the Parliament, recommended to be the King's Chamberlain.

But the Warmth of the Court, and the Sweetneſs of Power, kindled in this *Hugh Spencer*, an *Ambition*, that made him fall in with the King's Inclinations, and, by an obſequious Behaviour, inſinuate himſelf into the King's Affections; by which, in a ſhort Time, he grew up to be *Equal* to *Gaveſton*, in the King's Fondneſs, and very much *Exceeded* him, in Pride and Inſolence; for he, and his Father *Hugh Spencer*, having *accroached* all the Power, and the whole Adminiſtration, they made the King their Property, and uſed him, juſt as he himſelf deſired, *i. e.* As a Shadow or Image, to act as they directed; inſomuch, that *Hugh* the Son, aſſumed a Power to deny, even the greateſt Noblemen, to ſpeak with the King, unleſs he were **Preſent**, and heard what was ſaid, and often **Preſumed** to return Anſwers; and, moreover, theſe Two **Regents** Honoured

noured themſelves, *viz.* The Father with the Dignity of Earl of *Winchester*, and the Son, with that of *Glouceſter*: And they took ſpecial Care, to oppreſs *Gaveſton*'s Enemies.

The publick Diſcontents renewed, and the King's lamentable Defeat, by the *Scots* at *Bannockburn* in *Scotland*, was imputed to young *Spencer*'s evil Management.

SECT. VII.

GREAT Numbers of Lords, and eſpecially the Lords Marchers of *Wales* (amongſt whom the Lord *Roger Mortimer* of *Wigmore*, was the moſt potent) aſſociated, to diſturb and remove, the **Arbitrary** Rule of theſe two Regents, and having taken up Arms, the Lordſhips and Eſtates of the two *Spencers*, were, by thoſe Barons, with great Violence, Ravaged and Deſtroyed.

Soon after which, the aſſociated Lords, ſent an Addreſs to the King, repreſenting the Adminiſtration of the *Spencers*, as *inſupportable*, and therefore requeſted, *That they, like* Gaveſton, might be *Baniſhed*.

To which the King returned a temperate Anſwer, ſeemingly referring their Complaints, to the Deciſion of the approaching Parliament: And a Parliament being held at *Weſtminſter*, 15 *E.* II. it was, by an Act of that Parliament, *Adjudged*,

That Hugh Spencer, *the Son, being Chamberlain to the King, and having drawn to him his Father*, had **Uſurped** *Royal Power and Sovereignty over the King's* Perſon *and Government*, amongſt others, in theſe Particulars;

I. *That upon every Application to the King, his* Anſwer *was continually ſuch, as the two* Spencers *pleaſed.*

II. *That they would not ſuffer the Great Men of the Realm, to ſpeak with, or come near the King, nor the King to ſpeak with them, unleſs in their Preſence, or in the Hearing of one of them, and that too, but when they pleaſed.*

III. *That*

III. *That they Adviſed the King to Raiſe* **Armies**, *and in their Quarrels to make* **War** *upon, and againſt, his own People.*

IV. *That in all Queſtions of Property, concerning them, and their Friends, or which they did undertake, or eſpouſe, no* **Right** *could be obtained, but according to their Pleaſures.*

And it was therefore **Enacted**, *That* Hugh Spencer *the Father and Son, ſhould be for ever* **Baniſhed**, *and that if they ſhould be found in* England, *after the* 29*th of* Auguſt, *then next* 1321, *they ſhould be dealt with, as publick* **Enemies** *to the King and Kingdom*; To which Act, the King gave the Royal Aſſent.

SECT. VIII.

BUT in this Parliament, there happened an Eminent Inſtance, proving the conſtituent Parts of this Conſtitution, to be ſuch, as is above aſſerted, and that the **Lords Spiritual**, are not one of the Three Eſtates; (to wit) the Lords Spiritual, being ſummoned, and attending in this Parliament, They fancied themſelves to be a diſtinct and *ſeparate Eſtate*, and to have a fourth **Negative**; and that therefore, without their Concurrence, no Law could be Enacted, or be Valid, and, as ſuch, they did, not only unanimouſly **vote**, againſt this Act, for baniſhing of the *Spencers*; but every *Individual Lord Spiritual*, Enter'd his *Proteſt* in Writing, againſt the Paſſing of it, and yet the Act paſſed; for the Lords Spiritual and Temporal themſelves, ſometimes admitted, *They were no more than Lords of Parliament*; the *Major* Part of whom, did, in all Times, bind and conclude the *Minor*; and therefore their Diſſent and *Proteſtation*, were rejected as Inſignificant, and of no Force or Value.

SECT. IX.

SOON after this, an Accident fell out, from which, as the **Root**, did ſpring great Events, **fatal** firſt to the aſſociated Lords; and, after that, **fatal** to the Two *Spencers* and their Adhe-

Adherents, the Manner of it thus; The Queen, who had always affected Moderation, and had inclined rather to the Lords, than to the Favourites, and had done for them many ſecret Services, was travelling to *Canterbury*, and, in her Journey, ſent her Marſhal to deſire, and provide for her, Lodgings in *Leeds* Caſtle in *Kent*, which belong'd to one of the potent and rich Lords, *viz.* the Lord *Badleſmere*; but the Governor ſent out a **Rough** Anſwer, *That he, without a* Command, *or Letter, from his Lord, would not ſuffer the Queen, or any other, to enter there*; upon which the Queen advanced in Perſon, and demanded Entrance, to Repoſe herſelf and Attendants for one Night; but ſhe was Denied, and forced to ſeek her Lodgings as ſhe could.

The angry Queen, at her Return, complained of the Affront, and ſo incenſed the King, and all others, that the King, with Eaſe, raiſed **Forces,** beſieged and took the Caſtle, and **hang'd** the Governor.

The Aſſociated Lords differ'd amongſt themſelves, ſome cenſuring, and others excuſing, this *Behaviour* towards the Queen; and for that Reaſon, were not able to prevent the King's Military Proceedings, though ſome of them rightly *ſuſpected*, they themſelves ſhould, at laſt, be involved in the Conſequences.

SECT. X.

THIS Succeſs, and the Popularity of it, brought back, from their Exile, the two *Spencers*; upon which, their now Elated Maſter, Replaced, or **Delegated** again, into their Hands, the whole Adminiſtration.

The Favourites, having *Reſumed* their Power, procured the Archbiſhop of *Canterbury*, and the Biſhops of his Province, in a Synod at *London*, to inſiſt on their *fourth negative Voice*, and to Adjudge and Declare, *That the late Act of Parliament, for the Baniſhment of the two* Spencers, *was obtained by Force, and was againſt Right*, becauſe the ſame paſſed againſt the negative Vote of every one of the Lords Spiritual; and, for that Reaſon, they, the Archbiſhop and Biſhops, **Adviſed** the King, by his Regal Authority, to **Repeal** and make that Act void.

And the Favourites procured the King, by Letters Patents, under the Great Seal, dated the 18th of *December* 1321. 15 *E.* II. by his Royal Authority to **Diſpence** with, and to Revoke or **Repeal** that Act of Parliament, for being paſſed, againſt the *negative Vote* of the Lords Spiritual.

The *Spencers* having thus obtained this Colour of Law, and finding the Inclinations of the Clergy and Common People favourable, they reſolved to make all thoſe, who had **Voted** for their Baniſhment, to feel the Weight of their Power and Revenge; and therefore improved the Conjuncture, by adviſing and procuring the King, to make **War** upon his own Subjects the Barons; and for that End, to raiſe the *Militia*, and carry an **Army** into the Marches of *Wales*, where lay the main Strength of the Aſſociated Lords, to Revenge their (*i. e.* the *Spencers*) Quarrels.

The **Aſſociated** Lords, on their Parts, Raiſed what Men they could, endeavouring to **Defend** themſelves, and to *Repel Force by Force*; but when the *Spencers* with the *Army*, and the King in it, were arrived at *Shrewsbury*, *Roger Mortimer*, and ſeveral of the Lords Marchers *deſerted*, and went over, and *ſubmitted* to the *Spencers*, which extremely weakened the Aſſociation.

Upon this Occurrence, *Bohun*, Earl of *Hereford*, and the Lord *Talbot*, two of the Lords Marchers, with their Forces, retired Northwards, and joined the Earl of *Lancaſter* at *Burton* upon *Trent* in *Staffordſhire*, where they ſtaid for ſome Time, expecting to be Reinforced by *Holland*, another Aſſociate, with Forces from *Derby*; and during their Stay there, they oppoſed and obſtructed the *Favourites* Paſſage over *Burton* Bridge; but a Ford in the River, being found above *Burton*, the *Spencers paſſed* there, and their Army being ſuperior in Numbers, the Aſſociated Lords, *Retreated* further Northwards; upon which, *Holland*, with his *Derbyſhire* Forces, *Deſerted*, and went over to the *Spencers*.

When the Aſſociated Lords came to *Burrough-Brigg*, they were there met, and faced by Sir *Andrew Harclay*, Governor of *Carliſle*, whom the *Spencers* prevail'd with, by fair Promiſes, of Sharing

in

in the Booty, of a ſucceſsful War, to march and join them, with a ſtrong Body of Diſciplin'd Borderers.

The Earl of *Lancaſter*, and the Lords, ſuſtained at *Borough Brigg* a ſharp Fight, in which the Earl of *Hereford* was killed; but the Lords could effect no more, than barely to keep the Poſſeſſion of the Town, without being able to paſs the Bridge; and, therefore, the next Morning, being preſſed before and behind, they *ſurrendered* Priſoners to *Harclay* at Diſcretion, who ſent the Captive Lords, being Nine or Ten in Number, amongſt whom was the Lord *Badleſmere*, and about Eighty Knights, and principal Officers, to the King, or rather to the **Spencers**, then at *York*.

The Regent *Spencers*, being now in the Height of their *Exaltation*, having moſt of their potent Enemies, Priſoners in their Cuſtody, they took Care to let the Nation ſee, and know, the *Plenitude of their Pride, Power, and Cruelty*; for as to the Impriſoned Lords (except the Earl of *Lancaſter*) the *Spencers* cauſed them all, to be *Condemned*, in a ſummary Way, to be Drawn, Hang'd, and Quartered; and ordered each of them, with a proportionable Number of Knights and Gentlemen of their Friends and Followers, to be **Executed**, *viz.* To be Drawn, Hang'd, and Quartered, in ſeveral Parts of the Nation, *viz.* At *York*, *London*, *Canterbury*, *Windſor*, *Briſtol*, *Glouceſter*, *&c.*

SECT. XI.

AS to the Earl of *Lancaſter*, whoſe Name was *Plantagenet*, and who was Couſin *German* to the King, and the Greateſt and Richeſt of all the Noblemen, and the firſt Prince of the Blood, and next Heir to the Crown, after this King's Children and Brother, he was *Reſerved* for the greateſt Affronts and Torments, which the Revengeful **Rage** and Malice, of the *Spencers*, could *Imagine* or *Invent*; and, therefore, they carried the King to the Earl's own Caſtle of *Pontefract*, and there behaved, as all Minions do, when an **Odious** and Illegal Part is to be Acted, *viz.* Theſe Favourites procured the **King in Perſon**, and in Defiance of this Conſtitution, to ſit in Judgment upon his near Kinſman, in the Earl's own Caſtle, attended by the Two *Spencers*, and ſome other Lords, whereupon the Earl of *Lancaſter* being brought before the King, his Majeſty,

upon

upon a bare *Reading* of the Articles againſt him, without *Arraigning* him, or *Hearing* his Anſwer or *Defence*, or Trying him by his *Peers*, Condemned him to be Drawn, Hang'd, and Quartered; but, in Reſpect to his Blood, the whole Sentence (except Beheading) was remitted.

This the Favourites did, to the End, the Judgment ſhould, or might, be (as it was) called, **The King's Judgment**, intending, that no Man ſhould dare, to call it by its **True Name.**

The next Day the Earl of *Lancaſter* was led to a Place without his Caſtle, and for his Entertainment, Six Knights of his moſt intimate Friends, were hanged there before his Face: After which, his own Head was **Chopped off** before his own Gates.

SECT. XII.

THIS dreadful **Carnage** of a Prince of the Blood, and of ſuch Numbers of the Nobility, ſtruck into the Nation Terror and Amazement; but, conſidering that theſe Lords and Commoners, were *Condemned* and Executed *Arbitrarily*, and therefore Illegally, without Tryals by their Peers, in direct Breach of **Magna Charta**, though it was in Time of Peace, and when the King's Courts of Law were open; and, conſidering that this **War** was made by the King, and all this Blood ſpilt for no other End, than to Support the Two *Spencers* in **Power** and Pride: Theſe Proceedings, therefore, kindled in the People's Breaſt a Fire, in the **Flames** whereof (when it broke out) the Two *Spencers*, and all their Adherents, were Conſumed.

As for *Roger Mortimer*, and the other Aſſociates, their **Treatment** was not much better; for they were Impriſoned; and at laſt *Condemned* to be Drawn, Hang'd, and Quartered; but in Return for their Deſertion, and voluntary Surrenders, their Lives (which, without their Eſtates, were little worth) were, to the End they might privately ſlide away, and avoid the Kingdom, ſpared.

SECT. XIII.

IMMEDIATELY after the *Execution* of the Earl of *Lancaſter*, a Parliament was held at *York*, in which all Things were carried, as the Two *Spencers* directed; for the Act for their Baniſhment was here, in the ſame Year it was made, Repealed, principally for that the ſame had paſſed againſt the expreſs **Negative** of all the Lords Spiritual; which *Repeal* was afterwards Repealed by the Act of Parliament of 1 *E.* III. *cap.* 2. And this laſt Repeal, made by that Statute of 1 *E.* III. was *Repealed* by the Act of Parliament of 21 *R.* II. And that of *R.* II. was again *Repealed* by the Statute of 1 *H.* IV. *cap.* 3. So that now the Act for the Baniſhment of the *Spencers*, which was paſſed, notwithſtanding the *Negative Vote* of all the Lords Spiritual, ſtands in Force; which is the ſtrongeſt Proof, that the Lords Spiritual have not a *Fourth Negative*, neither are they a diſtinct Eſtate, nor one of the Eſtates without whoſe Concurrence no Law can be made.

It is remarkable, That in the ſaid Act of *Repeal* made at *York*, the Complaints of the Two *Spencers*, for Breach (in Relation to them) of *Magna Charta*, was ſet out in an Elaborate, Artificial, and Pompous Manner, though they themſelves, had made no Difficulty, to break the Whole, and every Branch of it.

SECT. XIV.

AFTER theſe Grand Atchievements, the Two *Spencers* **Glutted** themſelves with the Eſtates, not only of the *Coudemned* Lords, but of the *Deſerting* Lords too, and became Monſters in Riches, inſomuch, that they grew wantonly **Arbitrary**; for now, in their Abſolute Power, recollecting (as is probable) ſome Things, which, in Favour of the Lords, had been ſecretly done, they Oppreſſed even the *Queen herſelf*, by Seizing all her Lands and Revenues; and in Lieu of them, appointed for her Maintenance, a *Narrow Penſion*, which, though ſmall, made her Dependant on the *Spencers*, for the Payment.

Some of the Biſhops alſo fell under the like Oppreſſion, which they well **Merited** for their Preſumptuous and Illegal Proceed-

I

ings, by which their Fellow Subjects, the Earl of *Lancaſter*, and others, were **Wronged** and Oppreſſed; (to wit) Firſt by aſſuming to have a *Fourth Negative*, and to be a diſtinct Eſtate, without whoſe Concurrence, no Law could be made, to be of any Force or Validity; and by aſſerting, *That their* **Authority** *was ſo Eſſential, as to be a* Cauſa ſine quâ non; Under which Pretence, they took upon them, to *Adjudge* an Act of Parliament to be Void.

And Secondly, By Adviſing the King to Aſſume a Legiſlative, or **Arbitrary** Power, (in after Times, called a *Diſpenſing Power*) to Repeal and Abrogate an Act of Parliament, without the Concurrence of the Two Eſtates of Lords and Commons; for by theſe, and other like Aſſiſtances and Services, the *Spencers* had obtained the *Uncontroulable* Power they now Exerciſed.

Numerous were the Gentlemen, whom the *Spencers* (becauſe they were Their *Enemies*) called the King's **Enemies**, as if they had been Parties in the Aſſociation, and under thoſe Pretences, *diſſeized* and took from them, their Freeholds and Inheritances.

As for Sir *Andrew Harclay*, whom the *Spencers*, for his moſt important Service, raiſed to be Earl of *Carliſle*, yet they, for quarrelling with them, about the **Spoil**, which from the great and unprecedented **Carnage** accrewed, cauſed him to be charged, and proſecuted, and *condemned*, upon frivolous Pretences, for High Treaſon, and in a very ſhort Time, to be *Drawn, Hang'd, and Quartered.*

SECT. XV.

IN this Place it may be material to take one ſhort View of the Kingdom, State, and Condition, in Relation to *Scotland*, during this King's 19 Years Reign, of which it may be ſaid, That it was moſt miſerable; for the King, in Perſon, at the Head of his Armies, *Invaded Scotland*, no leſs than three Times, to preſerve what his Father won and left him; but was every Time driven back, with great Loſs and Diſhonour, and in one of thoſe Invaſions, he ſuffered, from that little Nation, a greater Overthrow, than this Kingdom ever received, from its moſt potent

potent Enemies; but, then, What ſhall be ſaid of the *Scots* Invaſions? who, in this King's Reign, ſucceſsfully *Invaded England* no leſs than 19 Times, *Plundering* and Deſtroying, in a moſt ſhameful and horrible Manner, the five Northern Counties as far as *York*, inſomuch that the **poor Engliſh** were, under this Reign of Minions, ſo *Diſpirited* in their natural Courage, and ſo *Degenerated*, that 100 *Engliſhmen* would **fly** before three or four *Scots*. It may therefore be concluded, that the Condition of the *Engliſh*, under the Adminiſtration of theſe Favourites, was moſt deplorable; and to this may be added, That the Reaſon, why the great Numbers of ſtrong Caſtles and Garriſons in *Scotland*, were, with great Eaſe and Rapidity, reduced by *Robert Bruce*, the *Scotiſh* King, was, becauſe King *Edward* had truſted, and committed the Cuſtody and Care of them, to Foreigners, who would not venture any Hazard, in making a valiant Defence: But to return;

SECT. XVI.

THE Exaſperated Queen, who, from the ſole Daughter of *France*, was reduced to the Condition of a *Waiting-Woman*, and to depend on the *Spencers* for a Maintenance, did, in Return for the ill Uſage and Indignities, with which the King *ſuffered* the two *Spencers* to treat her; *Imbibe* ſome Animoſities, even againſt her Lord and Husband, looking on his *Perſon* as indolent, and unactive, to whom it was in vain, to make Applications; becauſe he nothing did, or would do, but by his *Favourites*, in whom he placed the ſupreme Government: She, therefore, by Advice of ſome of the oppreſſed Biſhops, *watched* for an Opportunity, to *viſit* her Brother, the King of *France*, and to beg his Advice and Aſſiſtance, which Opportunity, in about one Year after, occurr'd, upon this Occaſion.

The Kings of *England* and *France*, differed about the **Homage** which the *French* King Demanded from the King of *England*, for the Dutchy of *Aquitain*, and other Territories in *France*.

The Favourite *Spencers*, knowing that the People were *ripe* for any Advantage, to *Revenge* the many **Arbitrary** and Unjuſt Acts by them diſpenſed, *Diſſuaded* the King from going in Perſon; and ſent Ambaſſadors, endeavouring to get an Acceptance

ceptance of Homage by *Proxy*; But this Method was, by the *French*, utterly Rejected, and, for the Neglect, the *French* King cauſed the *Engliſh* Dominions to be *ſeized*, and ſequeſtred, and Things growing worſe and worſe, and tending to an open **Rupture**, the Queen, by ſome Friends, who ſeem'd as indifferent Perſons, propoſed, *That ſhe was a fit Perſon to go, with a ſmall Retinue*, and, as it were, *Incognito, into* France, *to mediate an Agreement with her Brother, the* French *King*.

The Favourite *Spencers* ſwallow'd the **Bait**, and the Queen was ſent accordingly.

The Queen, artfully enough, brought her Brother into this Expedient, *viz. If King* Edward *would* transfer *over thoſe Dominions to the Prince of* Wales *his Eldeſt Son, and ſend him over, He, the* French *King, would accept the Prince's* **Homage** *in Lieu of King* Edward's.

This Second **Bait** was, by the Favourite *Spencers*, alſo *ſwallowed*, and the Donation being made, the Prince was ſent into *France*; and, upon his performing the *Homage*, Seizin and Poſſeſſion of thoſe Countries and Dominions were Reſtored, or Delivered to him.

By theſe Means, the Queen gained **Poſſeſſion** of her eldeſt Son, which was all ſhe wanted; and the *Spencers* Eyes (when it was too late) began to open, and ſee how impolitick, and inconſiderate a Step it was, to permit a Lady, ſo high Spirited, and ſo highly Diſobliged, as the Queen was, to go out of their Power; and, therefore, the *Spencers* ſpared no Pains or Inſinuations, to **Decoy** back the Queen and the Prince; and they, on the other Hand, found *Means* to avoide the Snare; whereupon the **Spencers** ſtirred up, and Incenſed King *Edward* againſt his Queen, and his Eldeſt Son the Prince, and by the Royal Authority, which they had accroached, procured ſuch Grievances to fall on the Queen and Prince, that they remained beyond the Seas, as **forſaken** of King *Edward*, and **Exiled** from *England*.

SECT.

SECT. XVII.

THE Queen equally feared, and hated the *Spencers* Abſolute Power, and **Bloody** Diſpoſitions, and ſhe and her Son were, in Foreign Parts, in great Danger; and therefore it became neceſſary, as well to them, as to the whole Nation, which was intereſted in the Prince's Safety, to caſt about, how to **Diſturb** and Remove the *Spencers*, before they durſt again, ſet Foot on *Engliſh* Ground; and, for that Purpoſe, the Queen Received *Mortimer* and the Earl of *Kent*, the King's Brother, and other Exil'd Lords and Gentlemen, into her Secret Cabals, who were alſo Encouraged, by **Invitations** from *England, That if the Queen could obtain but* 1000 *Men at Arms, and land with them, the whole Body of Lords and Commons would* **join** *her, and take effectual Care, That the exceſſive* **Power** *and Pride of the* Spencers, *ſhould never more affront her, or oppreſs and Enſlave the* **Inviters.**

The *Spencers* finding all their Efforts, to get again the Queen and Prince into their Power, fruitleſs and ineffectual; turned their Engines another Way, and, by their Gold, rightly applied in the Courts of *Rome* and *France*, *procured* preſſing, and even menacing *Admonitions* to the Queen, to perform her Conjugal Duty, and be obedient to her Lord and Husband, which ſhe *Interpreted* as Mandates, to repair to *England*, and there ſubmit to the *Spencers* Dominion and Sovereignty.

The Queen finding this Change in *France*, and fearing to be by Force Delivered up, withdrew, privately, carrying her Son, the Prince of *Wales*, to the Earl of *Haynault* in the *Low-Countries* (a Rich and Potent Prince) who, in Conſideration of a *Marriage* then contracted, between his Second Daughter *Philippa*, and the Prince of *Wales*, then 14 Years of Age, aſſiſted the Queen and Prince, with 2700 Men, and with Ships to tranſport them: With which ſmall **Forces**, the Queen, and Prince, and *Mortimer*, &c. did, about the 22d of *September* 1326. Land at *Orewell*, now *Harwich*, in *Eſſex*; and all the Lords and Gentlemen in thoſe Parts, firſt; and after, of other Parts, and particularly *Henry Plantagenet*, Earl of *Lancaſter*,

Brother and Heir, of the late ſlaughter'd Earl *Thomas*, joined the Queen and Prince, with all their Power.

SECT. XVIII.

THE *Spencers* beſtirred themſelves, by iſſuing out Proclamations, in the King's Name, againſt his Queen, and his Son, and Brother, *&c.* and, particularly, ſent to the City of *London*, to raiſe Men for the King's Defence and Aſſiſtance, which met with a Reception as cold, as if the Citizens had ſaid, *That ſuch* Forces *could be of no other Uſe, than to bind faſter on, their own Chains, and to* ſupport *in Pride and Power, the two* Spencers; for that, if the King would deliver up, and abandon thoſe Men, and their Adherents, as his, and the Nation's Enemies, his Majeſty could want no Defence or Aſſiſtance.

The *Spencers*, not being able to ſtand this Storm, retired into the Weſt, taking along with them, the King's Perſon, but without his *Power*, for that was Departed; and the Peoples Averſion appear'd ſo Univerſal, that the poor Men in the Weſt, could not be hired for Money, to take Arms under the *Spencers*.

The Time was now come, when theſe Arbitrary Regents, were to be *Treated* in like Manner, as thoſe who Violate all Laws, are, by the Abuſed People, uſually treated; and ſo it was, that the *Spencers*, being taken Priſoners, were treated as they Deſerved, *viz. As publick and Implacable* Enemies *of the King and People, and as evil Miniſters, from whoſe* Arbitrary *and Wicked Adminiſtration, ſuch Miſchiefs were occaſioned, as no Puniſhment could equal the Enormity.*

The King lay, for ſome Time, Concealed; but the Blood of his Kinſman, *Thomas Plantagenet*, Earl of *Lancaſter*, ſo illegally and cruelly ſpilt, Crying after him, diſcover'd him to thoſe, by whom he was, with Fury, purſued; The triumphant Queen, and Prince, and Lords, having gotten into their Cuſtody, the Great Seal; cauſed a Parliament to be ſummoned, in King *Edward*'s Name, which, being Aſſembled at *Weſtminſter*, on the Fifteenth Day of *December*, 20 *Edward* II. the Lords and Commons proceeded to make a Repreſentation, in which were Inſerted

Inſerted and Aſſerted the **Original** Terms of the *State and Government*, and next, the particular Breaches, which they *Objected* to King *Edward*'s Adminiſtration; and thereupon they **Reſolved**, *That King* Edward *had rendered himſelf* **incapable** *of the Regal Office*; *That the Throne was thereby Vacant*; and, laſt of all, they Reſolved, *That* Edward, *Prince of* Wales, *King* Edward *the Second's Eldeſt Son, ſhould be, and be* **Declared** *King of* England; and he Accepted the Crown accordingly, by which Means the Monarchical Eſtate was *Reinſtituted*, and the Breaches of the Conſtitution were made up and Repaired.

SECT. XIX.

THESE Proceedings were, in thoſe Times, and, for a long Time after, called a **Statute**; and it is beyond all Contradiction, that the ſame were entered on the Parliament Rolls, and ſo continued for the Space of Sixty-five Years and upwards, as is evident from the **Statute** of 21 *Richard* II. wherein it is Remembered, *That this Statute of* 20 E. II. *was ſent for, and* **produced** *in the Parliament of* 10 *R.* II.

A Valuable Record it was, becauſe from thence it might have been ſeen, and diſcovered, **What** were the Terms of the **Original** Conſtitution, as they were taken and underſtood to be 400 Years ago; but all the Rolls of this Parliament were, by King *Richard* II. **Subſtracted** and Deſtroyed, as will after appear, in the Breaches of this Conſtitution, *Charged* in his Reign; for it appears by the Rolls of Parliament in the *Tower*, That thoſe of 1 *E.* III. are Sewed, or Stitched to thoſe of the 19th of *Edward* II. ſo that all thoſe material Proceedings of the whole Parliament of 20 *E.* II. are conveyed away, embezled, and ſuppreſſed.

It is therefore Difficult (after ſuch a *Chaſma*) to ſay, what were the Particulars, of thoſe Breaches of the Conſtitution, that were then objected and charged: All that can now be collected from the Hiſtorians, is, That the Lords, and Commons did Reſolve, *That this King, having* **Diſmiſſed** *himſelf from his* Regal *Executive Power*; *and* **Delegated** *that Power, into the Hands of* **Favourites**, *and having himſelf Declined all Exerciſe*

ciſe thereof; inſomuch that all Attempts to apply to him, **Without** *the previous Permiſſion, and Approbation of his* Favourites, *were Vain and Nugatory; and that from this Demeanor flowed all Manner of* **Arbitrary**, *and Illegal Acts in the Government, That therefore this King, for thoſe Reaſons, was unfit, or rather Incapable to* **Govern**; which Allegation did, in Fact, comprehend all Sorts of Reaſons. And, in the Concluſion, they Reſolved, *That this King had Deſcended from, and* Vacated *the Royal Seat, and that therefore it became neceſſary, to fill again* (according to the Terms of this Conſtitution) *the vacant Throne.*

BREACHES IN THE REIGN OF KING RICHARD II.

CHAP. VII.

SECT. I.

THE next Breaches happened in the Reign of King *Richard* II. who aſcending the Throne in the 11th Year of his Age, fell under the Influence of Evil Miniſters and Flatterers, who filled his Mind with **Arbitrary** Notions of the Regal Dignity; and thoſe Tares being ſown in a Soil productive of Extravagancies, produced in the King the moſt Steady Reſolutions to acquire the *Fancied* Power, and to deſtroy all Oppoſers of his Progreſs to it; whereupon his Reign proved a *lively Scene* of many Parts of the Conſtitution, ſhewing how the Counſels and Endeavours on the Part of the King, to **Govern** as an Abſolute *Monarch*, and on the Part of the Lords and Commons, to **Defend** and Preſerve

the Conſtitution, and the Fundamental Form of this Government, were *Managed* and *Exerted*.

This King did, as it were, Transfer, or **Delegate** over his Regal Authority to Five Favourites, *viz. Alexander Nevill*, Archbiſhop of *York*, *Robert de Vere*, Earl of *Oxford*, and after Marquis of *Dublin*, and Duke of *Ireland*, who had married *Philippa*, Daughter of *Iſabella*, eldeſt Daughter of King *Edward* III. *Michael de la Pole*, Earl of *Suffolk*, *Robert Treſilian*, Chief Juſtice of the *King's Bench*, and Sir *Nicholas Brambre*, a Knight of *London*; who, with their Adherents, Ruled **Arbitrarily**, endeavouring in all Things, to change the Government from a Limitted, to an Abſolute *Monarchy*, and from their Adminiſtration, Innumerable Grievances, Oppreſſions, and Deprivations of Mens Freeholds, were Introduced.

SECT. II.

IN thoſe Circumſtances, a memorable Parliament was opened on the 1ſt of *October*, and ended on the 20th of *November*, in the 10th Year of this King's Reign, 1386; but the King underſtanding, that *Michael de la Pole*, his Chancellor and Favourite, would be Impeached, Abſented himſelf from his Parliament, Retired into *Kent*, and Reſided at *Eltham*.

The Lords and Commons being thus *Deſerted* by their King, and Involved in Difficulties, conſidered of many Ways how to Redreſs the Publick Diſorders; and, amongſt others,

I. A Member moved in the Houſe of Commons, *That the* **Statute** *might be ſent for, and laid before them, whereby King* Edward II. *had been proceeded againſt; that from the Inſpection thereof, they might ſee, what was the* **Conſtitution**, *or the Nature of the* State *and Government, and what had been done in the like Caſes, to Repair its Breaches and Diſorders.* By this *Statute* was meant, doubtleſs, the Parliament Rolls of 20 *E.* II. And theſe Rolls were accordingly brought, and laid before this Parliament.

II. The Houſe of Commons Elected Eleven Lords, or Great Men, of whom *Thomas Plantagenet*, called *Thomas* of *Woodſtock*, Duke of *Glouceſter*, the King's Uncle, was one, to be Com-

Commiſſioners for one Year, to Survey and Examine the *State* and *Governance* of the Kingdom.

III. The Lords and Commons joined in an Addreſs, and ſent it to the King at *Eltham*, humbly Requeſting him to Diſplace his Chancellor and Treaſurer, offering Reaſons for ſo doing; at which the King being offended, commanded them, *No more to ſpeak of that Matter, but proceed to the Buſineſs, for which they were ſummoned*, adding an untoward Concluſion to the Anſwer, not fit to be Repeated. And then ſent to the Parliament, peremptorily demanding a great Sum of Money: But the **Meſſage** was Provoking; 1. For being brought and delivered by *Michael de la Pole*, Earl of *Suffolk*, a Perſon whom they hated, and had reſolved to *Impeach*. 2. For the Reaſon the King gave, *viz.. For that without it, he could not* Support *his Houſhold* (i. e. His evil Counſellors.)

IV. The Lords and Commons join'd in a **Reſolution**, and ſent it to the King at *Eltham, viz. That they neither could, nor would, proceed in any Buſineſs, 'till the King ſhould come and ſhew himſelf in Perſon amongſt them.*

Upon which ſome croſs Circumſtances happened.

V. The Lords and Commons fearing Things would grow worſe, ſent again one of the greateſt Peers, *viz.* The ſaid *Thomas Plantagenet*, called, *Thomas* of *Woodſtock*, Duke of *Glouceſter*, and alſo a Biſhop of a Noble Family, with a Meſſage to the King at *Eltham*, repreſenting, *That it was their Privilege, by the* **Antient Conſtitution**, *that if the King would Eſtrange himſelf from his Parliament, and would Withdraw himſelf, and be Abſent for the Space of* 40 *Days, the Parliament might diſperſe themſelves, and go Home.*

To which the King gave a Wild and Extravagant Anſwer, *viz.*

That he now ſaw his People, and the Commons, would **Reſiſt**, *in which Caſe he would* **Call** *in the* French *King to Aſſiſt, and even rather ſubmit to him, than Truckle to his own Subjects.*

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The Duke and Biſhop thereupon, after ſome modeſt Apologies and Expoſtulations, delivered to the King, the latter Part of their Meſſage:

That the Parliament had an Antient Conſtitution, and which had been, not many Ages before, experimented; That if the King, by evil Counſel, or by Obſtinacy or Contempt of his People, or out of perverſe Wilfulneſs, would alienate himſelf from his People in Parliament Aſſembled, and refuſe to **Govern** *by the Laws and Statutes of the Realm, according to their Advice; but would ſtubbornly Exerciſe his Regal Power, by his own Arbitrary and Wild Counſels, That then his Parliament might declare the Throne* **Vacant**, *and fill the ſame again with ſome other Prince of the Royal Progeny.*

They therefore Adviſed and Importuned him, *To Recall his Royal Mind, and Remove the Evil Counſellors; for that it would be found, they could neither Aſſiſt, nor Comfort him, although he ſhould, in a Time of Danger, ſtand in the utmoſt Need of them.*

Theſe Arguments brought the King to his Parliament, where the Lords and Commons *ſhewed his Majeſty, the Record of the Proceedings* againſt King *Edward* II. but with great Loyalty ſubmitted themſelves, humbly Requeſting the King, to join with them in Redreſſing the National Grievances; and the King, ſeemingly, complied.

Michael de la Pole, Earl of *Suffolk* (who, from being the Son of an ordinary *Burgher* in *Hull*, had been ſuddenly Raiſed to that Dignity) was, thereupon, Impeached for High Crimes and Miſdemeanors, Tryed, Condemned, Fined, and Impriſoned in *Windſor-Caſtle*.

And the King, at the Petition of the Commons, not only paſſed in full Parliament, a **Commiſſion** by Letters Patents, dated the 19th Day of *November*, 1386, giving Power, for One Year only, to the Eleven Lords ſo Elected by the Commons, or any Six of them, to Survey and Examine the *State* and *Governance* of the Kingdom, the King's Houſhold, his Officers, Miniſters, Courts, Revenues, &c. But gave alſo, the Royal

Royal Assent to an Act of Parliament, *Confirming* that **Commission**, and Authorizing the putting it in Execution.

The Commons, on their Part, gave the King a considerable Tax, and all Things, seemingly, tended to a good Conclusion, had not the King, on the very next Day, being the Day that closed this Session of Parliament, *declared* from the Throne, *That his Will and Intention was, That the* Prerogatives *of his Crown, should* not be prejudiced *by any Thing done in that Parliament.*

From which it was inferred, That the King took this Opportunity to declare, *That his Prerogative was a Principle of* **Power** *in Government, Inherent in, and Inseparable from the Crown, which was not, nor could ever be, by Act of Parliament Bound or Limited*; *and that this* **Sovereign** *Prerogative remained in him, or was reserved to him, in the Nature of a* **Power** *of Revocation of any Law, although he should give thereto the Royal Assent*; which Declaration implied, *That he claimed a Power, above all Acts of Parliament, to* **Dispence** *with any Law, which he should judge was to his Royal Prerogative prejudicial.*

It does not appear, that the Eleven Lords acted Vigorously under that *Commission*; but, on the contrary, were driven rather to **Defend** their own Lives and Estates, than Accuse or Punish Offenders.

SECT. III.

THIS Commission, nevertheless, so terrified the Five Evil Ministers, that, to evade the Consequences, they possessed the King, that this Act of Parliament and Commission, were a **Lession** of his Royal Dignity, and the King being himself Governed by them, they carried his Majesty into *Wales*, where they **Conspired**, not only how to Annul and Rescind all the Proceedings of the last Parliament, from which their Fear came, but to *Subvert* the Fundamental Form of this Government, and to Sap and *Extinguish* the Authority and Freedom of the Two Estates of Lords and Commons, and to make the King an Absolute **Monarch**; To effect which grand Undertaking, their Resolutions and Advice Issued and Centred in these Three Particulars, *viz.*

I. *To procure from the Judges, an Opinion, That all the Proceedings of the laſt Parliament, were Illegal and Treaſonable.*

II. *To procure the Sheriffs to Return ſuch Members of a New Parliament, as the King ſhould* Nominate. And,

III. *To Raiſe an* Army *to Support and Vindicate thoſe Meaſures.*

Theſe Counſels ſuiting the King's Inclinations, he Reſolved to take that Advice, and *Cut* down all Oppoſition that ſhould *Croſs* the Attempt.

As to the Second Branch of the Scheme, they, at this Time, failed; for the Sheriffs not proving of a right Complexion, refuſed to Comply.

But as to the firſt Branch:

They cauſed one *Blake*, of the King's Counſel at Law, to draw up (as a Foundation to proceed upon) an Indictment for Treaſon, againſt the Commiſſioners, and ſome of the Procurers of that Commiſſion, who had been Active in Parliament, to Frame and Contrive the ſame.

The Indictment ſo drawn by *Blake*, was to this Effect, *That the Commiſſioners had Traiterouſly Conſpired amongſt themſelves in* Parliament, *to make this Commiſſion, by Authority of Parliament, againſt the Regality of the King, to his Diſheriſon, and to the Derogation of the Crown; that they compelled the King's Conſent; and that they Confederated and Bound themſelves to maintain one another in ſo doing.*

But before any Proceedings were to be had upon this Indictment, the Five Favourites Adviſed the King to command proper Queſtions to be drawn up and prepared, and to demand the Opinion of the Judges, *viz.* Of the Two Chief Juſtices, and of the Chief Baron, and of the Three other Judges of the *Common Pleas*; and of *Lockton*, the King's Serjeant at Law: And, in Order thereto, *Blake* drew up the Queſtions, for the Judges Opinions.

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The Judges were ſent for, to *Nottingham-Caſtle*, where, in the King's Preſence, they were commanded, upon their Allegiance, to Deliver their Opinions: The Judges were either terrified, or compliant; for the two Chief Juſtices, *Treſilian* and *Belknapp*, and the Judges *Holt*, *Fulthorp*, and *Burg*, Signed their Opinions in Writing, Dated the 25th of *Auguſt* 1387, at *Nottingham*, to which all the other Judges, except *Skipwith*, who was ſick, Aſſented; by which they **Anſwered**, or rather Prejudged the Queſtions tendered to them, in Manner following:

I. One Queſtion was, *Whether the ſaid Statute and Commiſſion were in Derogation to the Crown, or hurtful to the King's Royal Prerogative?*

The Anſwer was, *They were hurtful.*

II. Another Queſtion was, *How they ought to be puniſhed, who adviſed and perſuaded the King to give the Royal Aſſent in Parliament to that Statute, and the Commiſſion to be made, in Purſuance of it?*

The Anſwer was, *They ought to be puniſhed with Death.*

III. Another Queſtion was, *Whether, after the Buſineſs of the Realm, and the Cauſe of Aſſembling the Parliament were, by the King's Command, diſclos'd and declared in Parliament, and Articles limited by the King, upon which the Lords and Commons ought to* proceed, *if the Lords and Commons would in any wiſe* proceed *upon other Articles, and in no wiſe upon the Articles limited by the King, 'till the King had* Anſwered *to the Articles exhibited by them, notwithſtanding that they were by the King* **Enjoyned** *to the contrary; Whether the King, in this Caſe, ought to have the* **Rule** *of the Parliament, and indeed to rule, to the intent, That upon the Articles limited by the King, they ought firſt to proceed, or not, before they* Proceeded *any further?*

To this Queſtion, the Judges *Anſwered, That the King, in this Caſe, ought to have the* **Rule**, *and ſo in Order, one after another, in all other Articles, 'till the End of the Parliament; and that if any Member of either Houſe of Parliament,* ſhould do

do contrary *to this* **Rule** *of the King, he ought to be puniſhed as a* Traytor.

IV. Another Queſtion was, *That ſince the King, whenſoever he pleaſed might* remove *his Officers or Juſtices, and might* juſtify *and* acquit, *or* puniſh *them for their Offences, whether the Commons in Parliament might, without the King's Will,* **Impeach** *in Parliament the ſame Officers and Juſtices for their Offences, or not?*

The Judges Anſwered, *That the Commons could not impeach them, and that he that doth contrary, ought to be puniſhed as a Traytor.*

V. Another Queſtion was, *How he is to be puniſhed, who* **Moved** *in Parliament, That the* Statute *ſhould be ſent for; whereby King* Edward II. *had formerly been* proceeded *againſt? by the Inſpection of which Statute, the ſaid new Statute and Commiſſion were* conceived *in Parliament.*

The Judges Anſwered, *That as well he that ſo* **Moved** *in Parliament, as he, who, in Purſuance of that Motion,* brought *the ſaid Statute into the Parliament-Houſe, were Criminous and* Traytors, *worthy to be puniſhed.*

King *Richard*, having gained this Colour of Law, to countenance his Proceedings, as if the ſame were legal, imagin'd, That nothing could diſappoint his Deſign, to obtain the Abſolute and **Arbitrary** Power, aimed at, and to extirpate the Powers and Privileges of the two **Eſtates** of Lords and Commons, by which only, the Acts of his Will and Pleaſure were bounded and terminated.

For this End, therefore, the King privately commiſſioned *Robert de Vere*, Earl of *Oxford*, Marquis of *Dublin* and Duke of *Ireland*, his Chief Favourite, to repair into *Wales* and *Cheſhire*, and raiſe an **Army**, and march them to him at *London*; at which Place, after an Abſence of ſix Months, his Majeſty had been, at his Return, very well received.

SECT.

SECT. IV.

THE Eleven Lords, the Commiſſioners, and their Friends, being Apprized of this **Conſpiracy**, and rightly judging (if the ſame ſucceeded) That the Fundamental Form of Government, and that Part of the Conſtitution, which conſiſted of the two **Eſtates** of Lords and Commons would be ſubſtantially overthrown and **ſubverted**; they, therefore, in **Defence** of the Conſtitution, and of their own, and the Peoples Hereditary Liberties and Privileges, raiſed an **Army**, and aſſembled at *Haringay-Park*, alias *Horneſey-Park*, near *Hackney* and *Highgate*, making above 40,000 Men, and Detach'd *Henry* Earl of *Derby*, eldeſt Son of *John* of *Gaunt*, Duke of *Lancaſter*, and afterwards King *Henry* the Fourth, with a ſtrong Party, to meet, and fight, the Duke of *Ireland*, in his March with the *Cheſhire* **Forces** towards *London*, and thereby **Diſturb** and Diſconcert thoſe **Arbitrary** Meaſures, which he was endeavouring, with armed Forces, to ſupport and render effectual.

The Earl met, and engaged, and routed the Duke of *Ireland* at *Radcot-Bridge* between *Oxfordſhire*, and *Berkſhire*, whereupon the Duke, who was, in Fact, the principal Minion and **Conſpirator**, fled into *Flanders*, and, after wandering about two or three Years, Died a Fugitive at *Louvain*.

This **Victory** ſhewed to the King, plainly enough, That his evil Miniſters had no Strength, when Defence was wanted; but the Lords, nevertheleſs, attended the King at *Weſtminſter*, in great Humility and Loyalty, and adviſed him to call a Parliament, and in it to **Reform** Diſorders; to which he Conſented.

The Parliament met at *Candlemas* 1387. being in the 11th Year of this King's Reign, and ſat about ſix Months, in which Time, the **Conſpirators** were *Impeached* for High Treaſon, for conſpiring, and endeavouring to ſubvert, and Overthrow Parliaments, and Parliamentary Proceedings; the Overt Acts of which Treaſon were, the procuring that Opinion of the Judges. They were attainted, and ſome of them executed; and, amongſt others, *Blake*, for his treacherous Queſtions, and *Treſilian* the Chief Juſtice (for his learned Opinion upon them) were both *hang'd*

at *Tyburn*. The reſt of the Judges were attainted of High Treaſon, and baniſhed to *Ireland*, but not *executed*.

In this Parliament, King *Richard* II. gave the Royal Aſſent to an Act or Statute, whereby the Raiſing of the Army by the Lords, and their *Aſſembling* at *Haringay-Park*, and their *diſturbing*, and purſuing, by Force of Arms, the ſaid *Conſpirators*, and their Army at *Radcot-Bridge*, and elſewhere, were approved and juſtified, as done, by Virtue of, and according to the Laws of the Land; and the ſaid Lords, and the People, their Adherents, were, by that Act of Parliament, cleared and indemnified.

SECT. V.

IN this Caſe, may be ſeen an Inſtance, where the Lords and Commons, in the utmoſt Neceſſity, and when all Means failed, Raiſed an Army of 40000 Men, and *Diſturbed* and purſued the Miniſters of an Arbitrary Government, without doing, or ſo much as imagining, towards their King, any Damage; but, on the contrary, intending, and doing him much Good.

The King, nevertheleſs, made ſmall Account of this Loyal Behaviour of the Barons towards him; but being *Delighted* with the Opinion of *Treſilian*, and the Judges at *Nottingham*, his Mind never ceaſed meditating, how to accompliſh the unlimited Power they invented; Judging, *That in Caſe he compaſſed it, he ſhould* Rule *according to all that his Soul deſired.*

The Conſpirators now Adviſed, *That, in Order to attain the End propoſed, it was abſolutely neceſſary, Either to* gain *over the Duke of* Glouceſter, who was Popular, and therefore Powerful, *or remove him out of the Way*: The Firſt was impoſſible, for his Honour and Virtue were inflexible; and therefore, the Latter was indiſpenſible; To do which in an open and publick Manner, was dangerous, becauſe the Love which the People bore him, as their *Liberty's Champion* and *Aſſertor*, made him too Formidable, to be treated in the ordinary Manner: It was therefore Reſolved, to make him away privately, and then Defame him; but this black Project was not practicable neither, unleſs the King would bear a Part in the Undertaking, to which his Majeſty conſented.

King

King *Richard*, therefore, being led by his own Favourites, went for that End, on a ſudden, from *Havering Bower*, in a Summer's Evening, and ſurprized his Uncle the Duke of *Glouceſter*, with a ſeeming kind Viſit at his Houſe at *Pleſhy* in *Eſſex*, as if he had come that Way by Accident; and, after a ſhort Refreſhment, and familiar Diſcourſe, the King, on Pretence of holding a Council the next Day, ordered his Uncle the Duke, to mount his Horſe, and attend his Majeſty to *London*; the Loyal and Well-meaning Duke, without ſuſpecting any Treachery, obey'd; But, O **nefarious Diſſimulation**! the King, at a Place agreed on, near *Stratford*, **clapp'd** Spurs to his Horſe, and Galloped away, leaving the Duke to be, by *Mowbray*, then Earl of *Nottingham*, and after Duke of *Norfolk*, and others, **Seized**, and, in an Ignominious Manner, Hauled on Board a **Barge**, and by it, to a Ship lying for that Purpoſe ready in the *Thames*, which hurried him to *Calais*, where he was confined in Priſon, and in [illegible] was (by the King's Order, according to the Hiſtories) *Preſſed* between Two Feather-Beds, and Smothered to Death.

Thus fell that great Patriot, who ſtrenuouſly **Diſturbed** and Oppoſed the Miniſters of Arbitrary Power and Slavery, and died a Martyr to this Conſtitution, and to the Liberties of *Britain*.

SECT. VI.

WHEN this Step was ſucceſsfully made, the King (having the Power of Appointing) did, in about Nine Years after the Formation of the Grand **Conſpiracy**, Model the Sheriffs, and other Officers, to his own Liking, and by them procured ſuch Members of a Houſe of Commons to be Returned, as his Majeſty privately Nominated to the Sheriffs; And ſummoned to this Parliament, ſuch Lords only, as would Adhere to his Meaſures, omitting many others: And, to make all ſure, he Raiſed, and kept **Standing**, a new *Cheſhire* Army.

The Parliament thus Compoſed, and thus Surrounded by **Standing Forces**, was opened in the 21ſt Year of this King's Reign, 1397.

The

The Parliament Rolls inform us, That this Parliament was held by Force and Violence; that it was held *Viris Armatis & Sagitariis Immenſis*; the Knights of Shires were not Elected by the Commons, *prout mos Exigit, ſed per Regiam Voluntatem*; and ſo the Lords, *Summoniri fecit Rex Dominus ſibi Adhærentes*: And Sir *John Buſſy* (a Creature of the Court) was Impoſed, as Speaker, on the Houſe of Commons.

Horrible it is to relate, the Proceedings of this Parliament, and no leſs ſurprizing, to find a Houſe of Commons (though illegitimate) running (and even preventing the King's own Wiſhes) to Inveſt him with an **Arbitrary** and Abſolute Power, and to throw away the Freedom and the Hereditary Privileges of the People of *England*: If theſe Men had been true *Repreſentatives* of the People, they might be Treated with **Odious** Characters; but as they were not, but were the King's own *Creatures* and Nominees, what they did, muſt be looked on, as the King's *Dictates*, and an Execution of his Commands, and not as the Acts of the Commons of *England*.

The firſt Thing that this **Spurious** Houſe of Commons did (being Influenced and Inſtigated thereto by Sir *John Buſſy*, their Speaker) was their officious taking Notice, of the *Acts* and *Proceedings* of the Two Parliaments, held in the 10th and 11th Years of this King's Reign, and Inveighing againſt them, as if the ſame were *Derogatory* to the King's Royalty; they therefore brought in a Bill to Annul and **Repeal**, not only the Parliament of the 11th Year of this King, but all the Acts, Judgments, and other Proceedings of it; which Bill was, with Violence, carried through both Houſes, and ſoon paſſed the Royal Aſſent.

In the next Place, this Houſe of Commons, in a ſort of Rapidity, paſſed a Bill to *Attaint* the Deceaſed *Thomas Plantagenet*, Duke of *Glouceſter*; and alſo *Impeached* and Attainted the Earls of *Arundel* and *Warwick*, and the moſt Active of the Eleven Lords, the Commiſſioners, for High Treaſon; the Overt Acts of which, were charged to be for **Moving, Debating,** and **Voting**, in thoſe Parliaments, the Matters aforeſaid, though the ſame had (by the joynt Conſent of the Three Eſtates of King, Lords, and Commons) actually paſſed into *Laws*; and alſo for *Aſſembling* Forces at *Haringay Park*, and *Fighting*, and

and Routing, the Duke of *Ireland*, at *Radcot-Bridge*; though the *Raiſing* and *Acting* with thoſe Forces, had been Approved of, and Juſtified by *Act of Parliament*, as done according to the Laws of the Land, in *Defence* of the Conſtitution, and in *Diſturbing* and Oppoſing the Miniſters of Arbitrary Meaſures.

The King, and his Miniſters, finding their Succeſs to exceed their Expectations, and obſerving, that by theſe dreadful Proceedings, Supported by *Cheſhire* Standing Forces, the Lords were intirely Intimidated, **Dared** every Thing, and reſolving to give a *Deciſive* Stroke to the Conſtitution, and to the Fundamental Form of this Government, they cauſed the very Queſtions that were propounded to *Treſilian*, and the other *Judges*, at *Nottingham*, and their Anſwers, to be produced before the King in Perſon, and before the Lords, and theſe Commons, in this Parliament Aſſembled, and there *openly* read; and it was, on the King's Behalf, there *demanded* of the Two Eſtates in Parliament, *How they thought of thoſe Anſwers?* and they (i. e. The Lords, and theſe Commons) ſaid, *That they* thought, *that thoſe* **Judges** *made, and gave their Anſwers duly and lawfully, as good and lawful Subjects of the King ought to do*: And in the ſame Manner Sir *Thomas Skelton*, learned in the Law, and *William Hankford*, and *William Brenchley*, the King's Serjeants at Law, being *demanded* by the King, of their Advice in this Behalf, ſaid, *That the* Anſwers were good and lawful, *and that they would have given the ſame Anſwers, if thoſe Queſtions had been demanded of them.* And *Thirning*, the new Chief Juſtice of the Common Bench, ſaid, *That the Declaration of* **Treaſon** *not declared, belonged to the Parliament; but that if he were a Lord, or a Peer of Parliament, and if he had been ſo demanded, he would have ſaid in the ſame Manner*; And ſo alſo ſaid *Rikehill*, Juſtice of the Common Bench, and *Clopton*, Chief Juſtice of the *King's-Bench*.

And thereupon the King cauſed an Act to paſs in this Parliament, wherein all this ſolemn **Pageantry** was Approved and Juſtified, and the Anſwers of *Treſilian*, and the Judges at *Nottingham*, were, by this Act of Parliament, Adjudged and Affirmed for good Law.

King *Richard* alſo procured an Act to paſs in this Parliament, whereby it was made **High Treaſon** to Procure, or Counſel to Repeal, Abate, Reverſe, or Annul, any of the Judgments

given, according to any Statutes made in that Parliament, and cauſed the Lords in Parliament to take Oaths, to hold and keep the ſame; which being framed in general and obſcure Terms, no Man knew how to behave, or do, or ſpeak.

The King alſo cauſed to paſs in this Parliament, an Act of Indemnity, and general Pardon; but inſerted therein, an *Exception* of Fifty Perſons, ſuch as the King ſhould think fit to name and declare to be excepted.

This Clauſe kept each of the Lords and Commons in Suſpence, and under an aſſured Dependance, for fear he ſhould be a Man excepted.

The King alſo cauſed to paſs in this Parliament, an Act, whereby the whole *Legiſlative Power* of the Parliament, was **Delegated** and Lodged in the King, with Twelve Lords, and Six Commoners, therein named, or any Six of the Lords, and Three of the Commoners.

Which Power was, in effect, Veſted in the King **Singly**; for theſe ſelected Lords and Commoners, could Act no otherwiſe, than as his *Subalterns*: And, after the paſſing theſe Acts, the Parliament was Diſſolved.

SECT. VII.

THE King having obtained this **Delegated** Authority, he, under Colour thereof, Enacted, and Paſſed many Arbitrary Acts, which may be called, *Delegated* Statutes, *viz.*

At the Tryal by *Battaile* between *Henry Plantagenet* Duke of *Hereford*, afterwards King *Henry* IV. who accuſed *Thomas Mowbray*, Duke of *Norfolk*, of High Treaſon; the King took upon him the Judicature thereof, in Perſon, and gave an Arbitrary Judgment, after the Manner of a Statute; for the King and his Subalterns made theſe Delegated Ordinances.

I. The King ordained, *That the two Dukes ſhould be both* **Baniſhed**, Hereford *for* 10 *Years, and* Norfolk *for Life.*

II. *That*

II. *That no Perſon ſhould* intercede *with the King for any Favour or* Mercy, *to alter that Sentence, upon Pain of great Forfeitures.*

III. *That the Duke of* Hereford *ſhould not* Return *nor* Converſe *with the Duke of* Norfolk, *nor with* Thomas Arundell, *Archbiſhop of* Canterbury, *then in Baniſhment, either in Perſon or by Meſſage, Letter, or otherwiſe, upon Pain of High Treaſon.*

IV. *That if the two Dukes, or any other for them; ſhould* ſeek *for any Manner of Pardon or Licence to return Home, they ſhould incur the Penalty of High Treaſon*; and yet it is Remarkable, that theſe two Dukes, were the only two Lords, that ſaved this King from being **depoſed** in the Eleventh Year of his Reign.

The King, with his ſelect Subalterns, made ſome other Statutes that are printed in the Statute-Book: And alſo one Statute, whereby they Enacted,

V. *That Endeavours to Repeal, or Reverſe any of theſe Delegated Statutes, ſhould be High Treaſon.*

VI. The King inſtituted certain diſtinct **Oaths** to be taken, and which were taken, by every Biſhop, and by every Temporal Lord; *never to* **Repeal**, *or Annul any of his delegated Statutes.*

VII. The King, and his ſelect Subalterns, by a Delegated Statute, **Attainted** one *Henry Bowet* of High Treaſon, for procuring from the King, Letters Patents, whereby his Majeſty gave Licence to the Duke of *Hereford*, then in Exile, by *Bowet* his Attorney, in his the Duke's Abſence, *To ſue out Livery of the Lands deſcended to him, from his Father*, John *of* Gaunt, *Duke of* Lancaſter, who died lately, and ſince the Duke of *Hereford's* Baniſhment.

Theſe Proceedings may have a double Application.

I. It may be Deemed, *That the Lords and Commons had* Abdicated *their own Privileges.* And,

II. It may be Collected from them; *That the King had* **Acquired** *an Abſolute Power in Government*; for he never needed to call another Parliament.

SECT.

SECT. VIII.

AND yet this King who aſpired to aggrandize, at Home, his Regal Powers and Prerogatives, was, nevertheleſs, adviſed to ſtoop to Foreign Potentates, and to debaſe the Dignity of the Crown: Which he did, by ſolliciting for, and procuring, the Pope's Bull, to confirm, not only the Acts he had procured to paſs in this Parliament; but alſo thoſe Statutes, which he and his Subalterns had, by the Authority to them *Delegated*, made and Edited.

King *Richard* having Accompliſhed, all theſe great Atchievements, fancied that he had now effectually *Bridled* the Lords and Commons; and that all the Oppoſers of his Abſolute Government, were either cut off, or bound down.

But this Sort of **Arbitrary Power**, being of a general Nature, and being Acquired and Eſtabliſhed, under the Colour and Pretext of Law, *Enſlaved* all Men, by ſtripping them of their laſt *Refuge*, and Right, to be *Relieved* in Parliament: And from thence, ſprung up a *general Fear and Hatred*, which Diffuſed and Spread over the whole Nation.

And, accordingly, in ſo ſhort a Time, as about two Years, after theſe unaccountable Proceedings, the whole Nation, took the **Firſt** Opportunity, to riſe, and **diſturb**, and purſue, and ſuppreſs the Miniſters of that Arbitrary Power.

The Conjuncture, that gave this Opportunity, happened thus.

The King, having illegally, and, in an Arbitrary Manner, without Accuſation or Tryal, *Baniſhed* into *France* the Duke of *Hereford*, who now, by the Death of his Father *John* of *Gaunt*, was become Duke of *Lancaſter*; many Lords and Commoners, ſent **Invitations** to the Duke, Requeſting him to Return Home, and become the Head, and they would raiſe and make the Body, of an Army, to *diſturb* and remove the Miniſters of that Arbitrary Power, which oppreſſed them: The Duke of *Lancaſter*, at firſt, Concealed, and, for ſome time, Demurred, upon the Propoſal; but King *Richard*, having made an Expedition

dition in Perſon, into *Ireland*, to ſuppreſs ſome ſmall Inſurrections, and Diſorders, of the *Wild-Iriſh*, and to revenge the Death of his Couſin *Roger Mortimer* Earl of *March*, whom the *Iriſh* had killed in Battle. The Duke of *Lancaſter* took the Advantage of that Abſence, and immediately prevailed on the Duke of *Bretagne* in *France*, to furniſh him with three Ships, and Eighty Men: With which ſmall Forces, he hovered, for ſome Time, upon the Weſtern Coaſts of *England*, to make Diſcoveries, and finding the Peoples Inclinations favourable; he ſailed to, and landed at *Ravenſpur* in *Yorkſhire*, where the Lords and Commons univerſally **Revolted**, and came in to him ſo faſt, that, in a few Days, his Army increaſed to 60,000 Men; with which he marched, without Oppoſition to *London*, and from thence to *Briſtol*, where he Aſſaulted, and took the Caſtle, and in it, ſome of King *Richard's Favourites* and Counſellors; whom he Delivered up, to be inſtantly *puniſhed*; in which Procedure, the Peoples Rage was ſo intenſe and importunate, that nothing could quiet them, without firſt *Hewing down*, Sir *John Buſſy*, the late Speaker, as a moſt deteſtable and curſed **Offender**; in that, by his Leading, the Hereditary Rights, Powers, and Privileges of the Commons of *England*, were *baſely* given up and **Betrayed**.

SECT. IX.

KING *Richard* now found the Fruits of thoſe ill Returns he had made to the two Eſtates of Lords and Commons, for their Dutiful and Loyal Behaviour towards his Royal Perſon, after their *Aſſembling at* Haringay-Park, and after the Defeat, at *Radcot-Bridge*, of the Duke of *Ireland*; for, finding the King's **Arbitrary** Inclinations ſo deeply rooted and imprinted, that no Means or Methods, could move or change them, the Lords and Commons looked upon it, as a Thing too Dangerous, to **give** him another Opportunity, to *break* his Engagements, or to *truſt* him again with Power to treat them, as he had done, the Dukes of *Glouceſter*, *Hereford*, and *Norfolk*, and the Earls of *Arundel*, *Warwick*, *&c.*

They, therefore, in full Parliament, proceeded and exhibited the **Breaches** of the Conſtitution, which they *Objected*, (*viz.*)

That the King had himſelf ſolemnly Declared, *That the Laws were only in his Mouth and Breaſt, and, that he himſelf* alone, *could make and change them, and that the Lives, Lands, and Goods of his Subjects*, were his, *to be diſpoſed of, at his Will and Pleaſure.*

That he had extorted from the Judges an extrajudicial Opinion, *That it was lawful to impeach for High Treaſon, any of the Lords or Commons, for what they moved, propounded, debated, and voted in Parliament; and for what they acted, by Virtue of the Commiſſion, Authorized by Act of Parliament.*

That he, by the Duke of *Ireland*, *had raiſed Forces in* Cheſhire, *publickly erecting his Standard againſt the* **Peace** *he had ſworn to keep*, i. e. *He had raiſed Forces, to make* **War** *on his own People, whom he had ſworn to* protect.

That he had ſupplicated and implored the Pope, to confirm the Acts and Proceedings, which he had cauſed to be paſſed, in his pack'd Parliament.

That he had not only cauſed the Sheriffs, to take illegal Oaths to obey all his Commands, but exacted of them, **Returns** *of ſuch Members of Parliament, as he* nominated, *ſome of whom he corrupted, and terrified others, to Vote as he directed.*

This was an Attempt, on the Eſſence of the Legiſlature and Conſtitution; which unhinged the whole Frame of the Government, and brought it into a State of Confuſion.

The *Latin* of this Article is fine, and deſerves Room in this Place.

Item licet de Statuto & Conſuetudine Regni ſui, in convocatione cujuſlibet parliamenti, populus ſuus, in ſingulis comitatibus regni, debeat eſſe liber, ad eligendum & deputandum milites, pro hujuſmodi comitatibus, ad intereſſendum parliamento, & ad exponendum eorum gravamina; & ad proſequendum pro remediis ſuperinde, prout eis videretur expedire; tamen Rex, *ut in parliamentis ſuis, liber conſequi valeat, ſuæ temerariis voluntatis effectum, dixerit mandata ſua frequentius vicecomitibus ſuis, ut certas perſonas, per ipſum regem nominatas, ut milites comitatuum,*

tuum, venire faciant ad parliamenta ſua, quos quidem milites, eidem regi faventes, inducere poterat; prout frequentius fecit, quandoq; per minas varias & terrores, quandoq; per munera, ad conſentiendum illis, quæ regno fuerant præjudicialia, & populo quamplurimum oneroſa.

That he cauſed his Uncle, the Duke of Glouceſter, *and the Earls of* Warwick *and* Holland *to be ſeized, the Duke to be impriſoned, and in Priſon to be barbarouſly* **Murdered,** *and the Head of* Arundel *to be illegally* ſtruck off, *and* Warwick *and* Cobham *to be illegally condemned, to perpetual Impriſonment, and the Archbiſhop of* Canterbury, *to be illegally baniſhed, and had ſeized all their Eſtates.*

That he was ſo unfaithful, and diſſembling in his Words, and Writings, that he became a Reproach to the Nation (no Man confiding in him).

That he, as a Spoliator, had cauſed the Rolls of Parliament, concerning the State and Government of the Kingdom, to be changed, raſed, and blotted as he pleaſed.

Amongſt the Rolls of Parliament ſo ſuppreſſed, were (no doubt) thoſe memorable Rolls of the Parliament of 20 *E.* II. before mentioned, containing a Deſcription of the *Conſtitution*, and **State** of the Government, and thoſe **Breaches** of it, made by the ſame King *Edward*; for which, the **Original Contract** was declared to be broken, and the Throne **Vacant**; which Rolls of Parliament were produced in the Parliament of 10 *R.* II. as before is mentioned, but are not now to be found, and, conſequently, were, by King *Richard* II. or his Order, or Procurement, Subſtracted and Deſtroyed, in ſuch manner as is before objected: However, thoſe Patriots, who, ſo lately as 10 Years before, had, in the Parliament of 10 *R.* II. ſeen and read the Parliament Rolls of 20 *E.* II. were well apprized of the Nature of them; and, doubtleſs, from them, they framed their preſent Proceedings: Whereby the **Vacancy** of the Throne was at this Time voted, and made apparent.

SECT.

SECT. X.

THE Lords and Commons therefore, in a full Convention, Aſſembly, or Parliament, Reſolved, *That the* **Original Contract** *was broken, and the Throne* Vacant: And, therefore, they *Reinſtituted* the Regal Eſtate, by filling again the Vacant Throne, and by Placing the *Crown* on the Head of *Henry* of *Bolingbrook*, Eldeſt Son of *John* of *Gaunt* Duke of *Lancaſter*; Stiling him King *Henry* IV.; who had *Reſcued* the Nation, and the Conſtitution, from that *Arbitrary Power*, under which it languiſhed.

This Revolution, being an Effect of the Conſtitution, Effected likewiſe that Reſtoration of the Conſtitution: And the Powers and Privileges, of the two Eſtates of Lords and Commons, being thus Recovered, an Act of a free Parliament, in the Firſt Year of King *Henry* IV. *Cap.* 3. paſſed: Whereby that Enſlaved and Enſlaving Parliament, of the 21ſt of *Richard* the Second, which had Delegated away, the Legiſlative Power, *&c.* and all the Acts, Judgments and Proceedings of it, ſtand Annulled, Reſcinded, and Declared void, and another Act of the ſame Free Parliament, *Cap.* 4. did, in like Manner, paſs, whereby the Act of Parliament of the 11th Year of King *Richard* II. which Approved and Affirmed the **Aſſembling** of the Forces at *Haringay-Park*, and their **Diſturbance**, Purſuit, and Suppreſſing of that Army, which was Raiſed, and which, under the Command of the Duke of *Ireland*, was Marching to Support and Effect **Arbitrary** Meaſures; was not only Revived, and Reſtored to its Original Vigour; but ſtands thereby Eſtabliſhed, as *a Thing done for the Great Honour and Profit of the Realm*; and thoſe Laws ſtand, at this Day, in Force, as Eminent Declarations of the Fundamental, and *Original Form* of this Government.

SECT. XI.

FROM which Premiſes, it may be Argued; That that Part of the *Britannic* Conſtitution, which Authorizes the Lords and Commons, to **diſturb** and purſue the Miniſters of Arbitrary Power, and which authorizes the two Eſtates of Lords and Commons to **declare**, *What are Breaches of the* Original

nal Contract, *and when, and for what Reaſon the Throne becomes* Vacant ; ſtands Proved and Confirmed by theſe two Eminent Laws or Acts of Parliament now in Force ; for, if it were in the Year One thouſand Three hundred Eighty-three, Lawful and Agreeable to the Laws of the Land, to raiſe an Army and *Aſſemble* at *Haringay-Park*, and, by Force of Arms, to diſturb and purſue the Miniſters of Arbitrary Power, *viz.* in the Eleventh Year of the Reign of King *Richard* II. ; why ſhould it not be likewiſe lawful ſo to do, in any ſucceeding Times, according to that inconteſtible Maxim, and Rule of Juſtice, and Equity, *That where the Caſes are alike, the Law is the ſame* : It is, therefore, without any Foundation of Truth, to ſay, *That the Conſtitution, and the Laws of the Land, have not continued the ſame, or are not the ſame, at this Day, as they were, in the Eleventh Year of King* Richard *the Second, One thouſand Three hundred Eighty-ſeven.*

It is Written of King *Henry* the Fourth, *That he was a Man Mighty in Valour and Politicks* ; but it's evident, he Affected to be over-wiſe, and too nice in Politicks, when he Waved a Good Title, to be Derived from the Conſtitution, and the Law of the Land, and Claimed the Government by Lineal Deſcent, from King *Henry* the Third, (to wit) *As Son and Heir of* Blanch Plantagenet, *Daughter and Heir of* Henry *Duke of* Lancaſter, *who was Son and Heir of* Henry *Earl of* Lancaſter, *who was Brother and Heir of* Thomas *Earl of* Lancaſter, whoſe Head was ſtricken off, before his own Gates of *Pomfret* Caſtle, and, *who was Son and Heir of* Edmund Plantagenet, *commonly called* Crouchback, *Earl of* Lancaſter, *Second Son of King* Henry *the Third* ; for this pretended Hereditary Right, was Apparently Fallacious and Untrue ; becauſe the Heirs of *Roger Mortimer* Earl of *March*, and other Deſcendants of King *Edward* the Firſt, who was Eldeſt Son of King *Henry* the Third ; were then Living : And, therefore, Sixty-one Years after it, will be found, That this Impolitick Claim, will be made Uſe of, as an Argument to remove this King's Grandſon, King *Henry* the Sixth, from the Throne.

BREACHES IN THE REIGN OF KING HENRY VI.

CHAP. VIII.

SECT. I.

THE Exiſtence and powerful Operation of this Conſtitution, did never more conſpicuouſly appear, than in this King's Reign; but thoſe eminent Effects cannot be made Intelligible, without firſt repreſenting the State of the Kingdom, at the King's Acceſſion.

It muſt therefore be remembered, That this King's Victorious Father, King *Henry* V. had laid Claim to the Crown of *France*, as he was deſcended from *Philippa*, a Daughter of *France*, and Wife to *Edward* II. King of *England*; and by his Victories of *Agincourt*, and other Places, had ſo far ſubdued the *French* King *Charles* VI. and the Power of *France*, that a State Agreement was made between the two Kings, and ratified by the Parliament

ment of *France*, whereby King *Henry* V. was to marry *Katherine*, the *French* King's Daughter, and to be Regent of *France* during that King's Life, and, after his Death, was to ſucceed him as King of *France*: In purſuance of which Contract, King *Henry* V. married *Katherine* Princeſs of *France*; but he died when his only Son King *Henry* VI. was under Nine Months old; and the *French* King *Charles* VI. ſurvived King *Henry* V. but Fifty-three Days.

The Princes of the Blood Royal of *England*, at the Death of King *Henry* V. were Men of great Valour and Capacities, *viz.* His two Brothers, *John Plantagenet*, Duke of *Bedford*, and *Humphry Plantagenet*, Duke of *Glouceſter*, and his three Uncles, the Sons of his Grandfather, *John* of *Gaunt*, Duke of *Lancaſter*, by the Lady *Katherine Swinford*; all Born at the Caſtle of *Beaufort*, in *France*, and legitimated by Act of Parliament, in the 20th Year of King *Richard* II. and by that Statute, were obliged to uſe the Surname of *Beaufort*. The Names of theſe Uncles were, *John Beaufort*, Duke of *Somerſet*, *Thomas Beaufort*, Duke of *Exeter*, and *Henry Beaufort*, Biſhop of *Winchеſter*, and Cardinal.

Another potent Prince of the Blood, was *Humphry Stafford*, firſt Earl, and after Duke of *Buckingham*, deſcended from *Anne Plantagenet*, Daughter and Heir of *Thomas Plantagenet*, called *Thomas* of *Woodſtock*, Sixth, and youngeſt, Son of King *Edward* III. which *Thomas* of *Woodſtock*, was Earl of *Buckingham*, and Duke of *Glouceſter*, and had been murdered at *Calais*, by Order of his Nephew King *Richard* II. as before is related.

Another Prince of the Blood, was *Richard Plantagenet*, Duke of *York*, deſcended, on the Father's Side, from *Edmund* Fifth Son of the great King *Edward* III. Duke of *York* (that is) he was Son and Heir of *Richard Plantagenet*, Earl of *Cambridge*, who was Son and Heir of the ſaid *Edmund* Duke of *York*: He was likewiſe deſcended on his Mother's Side, from *Lionel Plantagenet*, Duke of *Clarence*, third Son of King *Edward* III. (whoſe two eldeſt Sons were deceaſed without Iſſue) that is, This *Richard* Duke of *York*, was Son and Heir of *Anne Mortimer*, Daughter and Heir of *Roger Mortimer*, Earl of *March*, who being Son and Heir of *Philippa Plantagenet*, Daughter and Heir of the ſaid *Lionel* Duke of *Clarence*, third Son of King *Edward* III. had been, in the Reign of King *Richard* II. declared Heir Apparent to the Crown.

Crown. This *Richard* Duke of *York*, was a Man of profound Thought and Subtlety, and of equal Valour and Induſtry.

Another Nobleman of great Activity and Ambition, was *William de la Pole*, firſt Earl, and after Marqueſs, and, at laſt, Duke of *Suffolk*; he was deſcended from *Michael de la Pole*, the Chancellor Impeached in the Reign of King *Richard* II. And this *William* was alſo Father of *John de la Pole*, Earl of *Suffolk*, who married *Elizabeth Plantagenet*, Daughter of the ſaid *Richard* Duke of *York*, and Siſter of King *Edward* IV. by whom he had Iſſue, *Edmund de la Pole*, Duke of *Suffolk*, who was bought by King *Henry* VII. of the Duke of *Britany*, and put to Death by King *Henry* VIII.

Theſe being many of the Great Men in *England*, King *Henry* V. by his Will, made a good and wiſe Proviſion, for the Government, during the Infancy of his Son King *Henry* VI. by Depoſiting the Adminiſtration of the Government, in the Hands of his Friends of the *Lancaſter* Line; to wit, he appointed his Brother *John* Duke of *Bedford*, to be Regent of *France*; and his Brother *Humphry* Duke of *Glouceſter*, to be Protector of *England*; and his Uncle, the ſaid *Thomas Beaufort*, Duke of *Exeter*, and *Henry Beaufort*, Biſhop of *Wincheſter*, and *Cardinal*, to be Guardians of the Infant King's Perſon, recommending to them all, to hold and preſerve to *England*, what he had won in *France*.

The *French* King *Charles* VI. having ſurvived King *Henry* V. but Fifty-three Days, the Infant King *Henry* VI. thereupon became King of *France* at Nine Months old.

SECT. II.

THESE were the Circumſtances that attended the Commencement of the Infant King's Reign:

The Duke of *Bedford*, Regent of *France*, performed his Part whilſt he lived, being about fourteen Years, with admirable Valour, Conduct, and Fidelity.

The Duke of *Glouceſter*, as Protector of *England*, punctually Adhered to the Conſtitution, and Adminiſtred ſo juſtly, that he gained

gained not only the People's Love, but the Character of the *Good* Duke of *Glouceſter*.

Previous to the Breaches of the Conſtitution, it will be neceſſary to obſerve the Affections, that ſoon appeared amongſt theſe great Men, in whoſe Hands the Governing Power was lodged, whilſt the Infant King ſat on the Throne.

I. The Protector's Conduct made him Popular, and for that Reaſon Powerful; but, at the ſame Time, it drew on him the Envy of the other great Miniſters, and eſpecially of his Uncle *Henry Beaufort*, Biſhop of *Winchester*, and Cardinal, who abounded with Riches and Pride, and being ſupported by the Biſhops and Clergymen, who always made a Majority in the Privy Council, and by *William de la Pole*, Earl of *Suffolk*, and others who Liſted in that Party, he, the Cardinal, found Means oftentimes, to carry Queſtions againſt the Protector, and to Embaraſs his Counſels and Deſigns.

II. The two Brothers, the Regent of *France*, and the Protector of *England*, ſtood up preciſely for the Honour and Majeſty of the *Engliſh* Name, and for preſerving to King *Henry* VI. what his Father had won in *France*; but the Cardinal of *Winchester*, and his Party, eſpecially *William de la Pole*, Earl of *Suffolk*, continually whiſpered, and perſuaded Peace, and diſparaged not only the General, who was Regent in *France*; but all the Meaſures and Counſels, that were taken, for carrying on a ſucceſsful War, and, doubtleſs (being thus inclined) they carried on, with the *French* Miniſters, ſecret Correſpondences.

SECT. III.

ABOUT the 21ſt Year of this King's Reign, the King's Marriage came under Conſideration and Debate in Council, and the Queſtion was, *Whether a Marriage with the Daughter of the Earl of* Armagnac, *or with* Margaret, *Daughter of* Reyner *Duke of* Anjou, *and Titular King of* Sicily, Naples, *and* Jeruſalem, who was Niece to the Queen of *France*, *were moſt for the Intereſt of the King and Kingdom of* England? *Humphry* Duke of *Glouceſter*, declared for the former, giving for his Opinion, this Reaſon of State, *That the Earl of* Armagnac *was*

the moſt Potent Prince in France, *and could afford the beſt Aſſiſtance, to defend and preſerve the King's Dominions in that Country, whereas* Reyner *Duke of* Anjou, *had been the King's Enemy, and had fought againſt his Intereſt:* And the Duke of *Glouceſter*, therefore, by his Credit and Authority in the Council, carried, for the preſent, the Queſtion, and the King was, by his Proxy, married to the Princeſs of *Armagnac*.

But the Cardinal of *Wincheſter*, the Earl of *Suffolk*, and others of their Party, being in the **French Intereſt**, perſuaded the Marriage with *Margaret* of *Anjou*, Daughter of *Reyner* Duke of *Anjou*, and Titular King of *Sicily*, repreſenting to the flexible King, that *Margaret* was the more beautiful Lady, and of greater Nobility, as being Niece to the *French* Queen, and would therefore facilitate a Peace with *France*: Theſe Miniſters, upon thoſe Suggeſtions, prevailed, and privately procured the *French* King to find **Means** to obſtruct and delay (as he did) the Paſſage of the Princeſs of *Armagnac*, into *England*, and, in the mean Time, the Earl of *Suffolk*, by ſecret Orders, Treated of, and Concluded a Marriage for the King, with the Princeſs of *Anjou*, which the King Accepted, and Ratified, and the Marriage was Solemnized, and the Daughter of *Armagnac* **Repudiated.**

Margaret of *Anjou*, now Queen of *England*, being a Lady full of Diſcourſe, buſy in Councils, and couragious, but changeable; and being Supported by the Cardinal of *Wincheſter*, by the Earl of *Suffolk*, and by the Dukes of *Somerſet*, and *Buckingham*, and other Adverſaries of the Duke of *Glouceſter*, ſoon found in the Perſon of her Husband, King *Henry* VI. the *Imbecility* of the Government, and aſſumed to herſelf, the Exerciſe of the Regal Power, and cut ſhort the Power and Influence, of *Humphry*, the good Duke of *Glouceſter*; and yet for all that, the Popularity and Power of *Glouceſter*, proved ſtrong enough to give Inſtructions, in many Caſes, to *Buckingham* and *Suffolk*, whoſe Power under the Queen, had otherwiſe been Abſolute.

SECT.

SECT. IV.

IT is here to be obſerved, That before this Marriage, the *Conſtitution* had, in the *Main*, been punctually adhered to, and Juſtice, with great Moderation, had been *impartially* adminiſtred, which kept the People, in general, contented; and that proves the Meaning of that Proverb, *Woe to that Nation whoſe King is a Child*, to be, Woe to that Nation, whoſe King *is a Child* (*not in Years*) *but in Abilities to govern*; for whilſt this King continued a Child in Years, his Kingdom and Government flouriſhed.

The Effect of this Adherence to the Conſtitution was ſuch, That the aſpiring Genius of *Richard* Duke of *York*, although he was Elder in Blood, than King *Henry* VI. who wore the Crown, never durſt, before the King's Marriage, ſo much as whiſper his Pretenſions to the Government; becauſe, ſo long as the Conſtitution was obſerved, every Man enjoyed the Benefit of the Law, and acquieſced.

It is therefore obvious, if the Duke of *York* had, before that Marriage, argued with the People, or with the two Eſtates of Lords and Commons, after this Manner, *Gentlemen, Here is my Pedigree, by which it appears, That I am nearer in Blood to the laſt Hereditary King*, viz. *to King* Richard II. (whom the two Eſtates, for breaking the Conſtitution, and his Coronation Oath, removed from the Government) *and that the two Eſtates did Wrong, in calling to the Government* Henry *of* Bolingbrook *Duke of* Lancaſter, *preferable to the* Mortimer's *Heirs of* Lyonel *Duke of* Clarence, *which Heirs were Elder in Blood, than the Houſe of* Lancaſter; *for you know* (Gentlemen) *It is a Maxim in other Countries, and eſpecially in the Civil Law, That Rights of Blood, are not to be altered by human Powers; for theſe Reaſons, Gentlemen, I deſire or require you to take up Arms, and Adventure your Lives and Eſtates, in aſſiſting me to become your Governor, to rule you as my Anceſtors heretofore did rule* England; I ſay, ſuch Arguments would have appeared Irrational and Ineffectual; for the People would have readily anſwered, *We live under a Form of Government, that is juſtly adminiſtred, whereby every Man enjoys his own, inſomuch, that when his Property, or other Liberties are queſtioned, Juſtice*

and

and Right is done; and we know, that you, if you were Supreme Governor, could do no more or better; *and as to the Government, when your Anceſtor, King* Richard II. *abdicated, and by his Miſ-Government broke the* Original Contract, Henry IV. *was called, and by Virtue of the Fundamental* Form *of our Government, placed in the* Vacant *Throne; The* Conſtitution *therefore, gave to King* Henry VI. (*as Grandſon and Heir to* Henry IV.) *the ſame Hereditary Right to the Government, as it hath given to us, the People, in Relation to our Lands, Liberties, Eſtates, and Hereditary Privileges, and we acquieſce therein.* As to the Rights of Blood, you mention, We Demand of you, *Who inſtituted, or gave in* England *thoſe Rights you pretend to? We know of no Rights, but thoſe that are derived from our* British Conſtitution, *and the Law of the Land; and, therefore, it will be unreaſonable, and unjuſt in us, to take up Arms, and adventure our Lives and Eſtates in* Diſturbing *a lawful Governor, to make Room for you to govern us, who claim under a Governor who had abdicated his Right for Miſgovernment; and therefore could never transfer a Right to you, to govern us, when he had, at his Death, none himſelf.*

Theſe Anſwers, or ſuch as theſe, would (doubtleſs) have been given to *Richard* Duke of *York*, if he had made Uſe of ſuch naked Arguments.

SECT. V.

IF this would have been the Caſe, before the King's Marriage, it becomes material, to ſee what happened afterwards, to alter that Caſe, and to furniſh the Duke of *York* with ſuch Arguments, as proved convincing and effectual.

The Queen, and her Favourites, having appropriated to themſelves the King's Perſon, they endeavoured to ſettle in him an abſolute Power in Government, that they themſelves might exerciſe it; and, accordingly, they *ſported themſelves* in wanton Acts of Power, ſuch as theſe:

The Purveyors for the King's Houſehold took Proviſions from the People, paying, or giving for the ſame, nothing but Court-Promiſes.

Theſe

Theſe Favourites at Court got Promiſes from the King, of the Lands and Goods of ſuch as ſhould be condemned; and in order to convict and condemn ſuch Perſons as had Lands and Goods, they procured indirect and unlawful Proceedings to be uſed in Accuſations, and in Subornation of Witneſſes, *Embracery* of *Juries*, and in obtaining of Letters, from Great Men, to the Judges; whereby Juſtice was perverted, the Innocent often Attainted, and if they were not Executed, yet they were, at leaſt, Impriſoned to their *Undoing*.

That Legal Proceedings, to recover juſt Inheritances, were greatly interrupted in all Caſes, where the wrongful Poſſeſſor's Friends were potent.

That the Freedom of *Electing* Knights and Burgeſſes for the Parliament, was violated, and many other Grievances, of the like Nature, were Enumerated, and Complained of.

Theſe Proceedings being Arraigned and Oppoſed, by *Humphry* Duke of *Glouceſter*, the Queen and her Favourites, *Suffolk*, *Buckingham*, and the Cardinal Biſhop of *Wincheſter*, procured this *Good* Duke of *Glouceſter* (for his over-much Care of the State) to be *Excluded*, not only from all Commands, but from the Council-Table; they ſtirred up Informers, to charge him with divers Offences, and although he juſtified himſelf, *yet no Juſtification would be heard*.

They reſolved, The Duke ſhould be, in a Parliamentary Method, condemned; for which End, they procured a Parliament to be held at St. *Edmonds-Bury*, and ſummoned thereto, the Duke of *Glouceſter*, who attended accordingly; And the Lord *Beamont*, as Conſtable of *England*, the Dukes of *Buckingham*, *Somerſet*, and others, **Arreſted**, and Impriſoned the Duke of *Glouceſter* for High-Treaſon: But the Conſpirators ſuſpecting the Succeſs of any publick Accuſation, the *Good* Duke was, on the next Day after his Impriſonment, being the 2d Day of the Seſſion of Parliament, found **Murdered** in his Bed.

The Death of this Patriot was, by the People, poſitively charged on the Queen and *Suffolk*, and ſo obliquely on the King; for the Fact was Evident, and it was in vain to pretend Ignorance, or Innocence; however, this is plain, That by this

Nefarious Act, in cutting down *Glouceſter*, (the ſtrongeſt Pillar and Support of the Houſe of *Lancaſter*) the King, with his Left-Hand, **cut off** his Right; after which, the whole Frame of the Government Reſted, or Devolved, on the Queen and her Favourites.

SECT. VI.

BY theſe Proceedings, the Pretender (*Richard*, Duke of *York*) was furniſhed with ſufficient Arguments; and, therefore, whiſpered to the two Eſtates of Lords and Commons, *That now it was evident, That the Conſtitution was violated, and the* Original Contract *broken*; but above all, *That the King was under an incurable Diſability to govern; and that there was no Government in being, and that, therefore, the Throne was* Vacant; *and that he, the Duke, as next in Blood, was Intituled, to be called to the Government, and placed in the Throne*; adding his own great Promiſes, *to govern according to the Conſtitution.*

The Duke of *York*, moreover, Alledged, *That the* **Murder** *of* Glouceſter, *was attended with a* Complication *of Breaches; for it was* Glouceſter's *Duty to obey the Summons to Parliament; that he did obey, and attend,* Depending *on the Privilege of Parliament, to protect and exempt him, from all Arreſts and Impriſonments; That, however, when any Man is* Impriſoned, *the Government is reſponſible for his Safety: But the Duke of* Glouceſter *was not only Arreſted, in Violation of the* Privileges *of Parliament; but* **Murdered** *in the Hands of the Government, although he was the King's Uncle; and whoſe Loyalty, Fidelity, Courage, and Induſtry, had been ſuch; that by his Good Services, King* Henry's *Throne had been Eſtabliſhed.*

Theſe Breaches of the Conſtitution, and thoſe before mentioned, being, in Fact, true, afforded ſuch Arguments, as the **People** heard with Attention; for they were now themſelves grieved, with a Multiplicity of Vexations, and wanted a Reſtitution to their *Hereditary Privileges*; and for that Reaſon, they encouraged the Duke of *York*, to purſue his own Claim, and their Deliverance; promiſing their utmoſt **Aſſiſtance.**

SECT. VII.

THE Fruit of theſe Whiſpers of the Duke of *York*, and of his Adherents, grew up ſo faſt, as to make his Friends come near to a *Ballance* with the other Part of the People: To which Grievances, was added, a *Diſhonourable Peace* with *France*, which was made, about this Time, by *Suffolk*, Acting therein as prime Miniſter, under the Queen's Influence, and ſecret Directions, to gratify her Aunt the *French* Queen.

The Peace was **Inglorious** to the *Engliſh*, for the Intereſt of *England* was proſtituted, and all Queſtions with the *French*, meanly given up; and even the King's faithful Allies were charged with Nonperformance, and treated as Enemies, and, as ſuch, were Deſerted, and *Abandoned* to utter Ruin: Whereupon the Ferment of the People Increaſed, and in the Parliament which was held at *Weſtminſter*, in the 28th Year of this King's Reign, the Commons *Impeached* the Duke of *Suffolk* for High Treaſon, and for other High Crimes and Miſdemeanors. The Overt Acts of which Treaſons, were theſe:

For Conſpiring with the Duke of Orleans, a Priſoner of State, kept in *England*, who was taken at the Battle of *Agincourt*, *how the* French *ſhould recover* France *from King* Henry, *and, in order to effect it, had procured that* great Priſoner *to be ſet at Liberty.*

For managing Matters ſo, that the Towns of Mans *and* Main, *in* Gaſcoign, *were delivered to the Titular King of* Sicily (the now Queen's Father) *King* Henry's *Enemy.*

For Diſcloſing to the French, *the King's Counſels.*

For Informing the French *of the King's Strength in Warlike Munitions.*

For Diſcloſing the King's Secrets, by Means whereof, the Truce was Broken.

For Staying ſundry Arms that ſhould have paſſed to the Armies of the King, and his Confederates, and had thereby Aided the King's Enemies.

For

For Comforting the King's Enemies, by making a ſeparate Peace with France, *whereby the King's Allies*, viz. *The Duke of* Britany, *was intirely Ruined, and the King of* Arragon *almoſt loſt.*

For procuring a Garriſon of Engliſh *to Fight againſt the* Germans, the King's Friends and Allies, *on the Part of, and for the* French, the King's Enemies, *and for other Crimes.*

The Duke of *Suffolk* anſwered the Impeachment, and yet refuſed to put himſelf on his Tryal by his Peers, but ſubmitted himſelf to whatever the King ſhould order.

At this Time, the Queen, and her Counſellors, held Conſultations how to deliver her Favourite Duke, where, doubtleſs, it was Debated and Reſolved, *That, according to the Maxims of the Civil Law, the Regal Power was Supream, Sovereign, and Abſolutely above the Parliament; That the Court of Parliament was the King's Court, and that the King might himſelf give the Judgment, when the Offender ſubmitted himſelf to the King's Order; And that this Judgment, ſhould be called the* King's Judgment.

The Queen, and her Junto, cauſed the King to go to the Parliament, and there, in Favour to her Favourite, the Duke of *Suffolk*, to take from before the Houſe of Peers, the *Judicature* of this Offender, and of his Offences: Whereupon, the King took upon him the *Judicature*, in his own *Perſon*, and gave Judgment upon the Impeachment, Inadequate to the Crimes, *viz.* He *Acquitted* the Duke of *Suffolk* of the *High Treaſon*; and as for the other Crimes, he only Baniſhed him for Five Years; and, for a preſent Colour, Committed him to the *Tower* till further Order.

The Lords Entered their **Protest** againſt this Proceeding, Declaring, *That this Judgment given by the King in his* **own Perſon**, *and by his own Rule, and not by their Aſſent, was an* Infringement *of their Parliamentary Rights and Privileges*; and Inſiſted and Claimed, *That neither they, nor their Heirs, ſhould, by this Example, be barred of their* Hereditary Judicature *or* Juriſdiction.

However,

However, this Arbitrary Proceeding was looked upon as such a Violation of the Fundamental Rights, Powers, and Privileges of both Houſes of Parliament, and ſo reſembled the late *Arbitrary Enterprizes* of King *Richard* II. that it Incenſed the People in General, and to Increaſe the Diſſatisfaction, the Duke of *Suffolk*, after he had remained about a Month in the *Tower*, was ſet at Liberty, and taken openly, into Favour at Court: After which, the Parliament was Adjourned to *Leiceſter*, where the King and Queen appeared in great Splendor, and brought in their Retinue or Attendance, the Duke of *Suffolk*, as Prime Miniſter of State.

The Commons renewed their Reſentment, and Petitioned, or Addreſſed the King, That all ſuch Perſons, as conſented to the Delivery up of *Mans* and *Main*, in *Gaſcoign*, pointing directly at *Suffolk*, might be duly puniſhed; and charged in their Addreſs, the Duke of *Suffolk* to be principal Adviſer, and Author of that Criminal Proceeding: Whereupon, the King was, in a manner, forced to Baniſh *Suffolk* for Five Years; But the *People*, in their Rage, Catched the Duke at Sea, as he was paſſing into an Honourable Exile, amongſt his Friends in *France*; and although he had been *Reſcued* by the King, from the Juſtice of Parliament, the People executed on him *Military Juſtice*, and, on the Side of the Boat, **Chopped off his Head**, which proves this Antient Obſervation to be true, *That when our Kings endeavour to Skreen, or Defend, or Deliver* State Malefactors, *they do but make the Commons more formidable.*

SECT. VIII.

FOR ſoon after, the People encouraged and enabled the Duke of *York*, to Support his *Arguments with Arms*: But it is not material to this Undertaking, to Relate this Duke's Military Proceedings; it is ſufficient to ſay, *That the Duke was Victorious in Three Battles*: 1. *At St.* Alban's, *where the King was made Priſoner.* 2. *At* Blore Heath, *in* Shropſhire. 3. *At* Northampton, *where the Duke, a ſecond Time, took the King Priſoner, and in his Name called a Parliament, which met at* Weſtminſter *in the 39th Year of King* Henry's *Reign.*

At this Time the People were poſſeſſed with a general Belief, That King *Henry*, for his Male Adminiſtration, had Abdicated the Government, and Broken the **Original Contract**, or rather, That the Nation was Void of Government, by reaſon the King was under an Incurable Incapacity to Govern; and that he, the Duke of *York*, being the moſt worthy of the Royal Family, ought to be called to fill the Throne (*i.e.* The Government) of *England*.

The Aſpiring Duke of *York*, having in his Power the Captive King, his Proceedings to claim the Government, exceeded all the Methods of that kind, that had ever been attempted; for the Duke having in View, Two Titles to claim by, *viz.*

I. *To derive his Title to the Government, by Lineal Deſcent from the eldeſt Son of King* Henry III. *which would appear to be preferable to King* Henry VI. *in Point of Primogeniture, becauſe King* Henry's *Kindred to the Crown, was Derived from the ſecond Son of King* Henry III.

But the Duke of *York* ſuſpected that this Claim to the Government, would be oppoſed by the Two Eſtates of Lords and Commons, becauſe, about 62 Years before, the Lords and Commons had Reſolved and Declared, *That the Hereditary Right to the Government, had been by Breaches of the Conſtitution, and of the* Original Contract *to obſerve it, made by King* Richard II. *Determined, and that the Throne had thereby, become* **Vacant.**

II. He judged, *That if he claimed a Title, by charging the* **Breaches** *of the Conſtitution, made by King* Henry VI. *and by objecting his Incapacity to Govern, and that the Throne was, for thoſe Reaſons, become Vacant*;

This Claim would Create an *untoward Aſpect* towards this Duke of *York*'s Anceſtors, the Kings *Edward* II. and *Richard* II. and would amount to a *Submiſſion*, or Approbation of their Removals; and that the Two Eſtates of Lords and Commons, had legally called to the Government, *Henry* of *Bolingbrook*, and juſtly placed him in the Throne; and, conſequently, that *Hereditary Right*, from the laſt Poſſeſſor of the Crown in the Duke

Duke of *York*'s Family (*viz.* King *Richard* II.) could give him no Title; becauſe the two Eſtates of Lords and Commons had Reſolved and Adjudged, *That King* Richard II. *had broken the Original Contract*; *and that the Throne was, for that Reaſon, Vacant*: And that King *Richard* II. could have no Heir, at that Time, becauſe he was Living, and lived above one Year after; and therefore he was not King, nor Poſſeſſor of the Crown, at his Death.

But the Duke of *York* had talked ſo much of his Lineal Deſcent, and was ſo Intoxicated with the Notions of Hereditary Right, that he Choſe to claim by that Title, and to Endeavour to make that Right to appear Indefeazible.

SECT. IX.

THE Ambitious Duke, therefore, had cauſed himſelf to be omitted and not ſummoned to this Parliament, to the End he might (as he did) become a Suitor, and exhibit to the Lords in Parliament, a **Writing**, containing his *Claim* and *Title* to the Government, in the ſame Manner, as if he had claimed the Manor of *Greenwich*, deriving his Pedigree from the eldeſt Son of King *Henry* III. (to wit) *As Son and Heir of* Ann Mortimer, *Counteſs of* Cambridge, *and after, Dutcheſs of* York, *Daughter and Heir of* Roger Mortimer *Earl of* March, *who was Son and Heir of* Philippa Plantagenet, *the Wife of* Edmund Mortimer, *and Daughter and Heir of* Lyonel Plantagenet *Duke of* Clarence, *third Son of King* Edward III.; *who was Son and Heir of King* Edward II.; *who was the Son and Heir of King* Edward I.; *who was Eldeſt Son and Heir of the ſaid King* Henry III.

That King *Edward* the Third's Eldeſt Son, *Edward* the Black Prince, had Iſſue only King *Richard* II. which Black Prince, and alſo King *Edward* the Third's ſecond Son *William* of *Hatfield*, were both Deceaſed, without Iſſue; and, therefore, *Edmund Mortimer* Earl of *March*, and after his Death, without Iſſue, his Siſter *Ann Mortimer*, Dutcheſs of *York*, *ought to have been called to the Government, and to have* ſucceeded *King* Richard II. *preferable to* Henry *of* Bolingbrook, *whoſe Deſcent was derived by his Mother, from* Edmund *Earl of* Lancaſter, *vulgarly*

vulgarly called Crouchback, *the ſecond Son of King* Henry *the Third.*

The Lord Chancellor of *England*, to whom this Writing was Delivered in Parliament, Demanded of the Lords, *Whether they would have the ſame Read?* to which they Anſwered, *Every Perſon, High and Low, who ſued to that High Court, by Petition,* **ought to be heard**; *and his* Petition *Underſtood*; Whereupon the Writing was, for that Reaſon, Read, and the Caſe opened; immediately after which Reading, the Duke of *York*'s Council Deſired, and Preſſed the Lords to give a ſpeedy Anſwer: And here it may be Obſerved, That this Claim imported in itſelf, either a *Petition* or a *Command*; If it imported a *Petition*, then it implied and ſupoſed the Petitioner, to be in a ſubordinate or Inferior Station, to that Court, to which he ſued for Juſtice: And, if it imported a *Command*, then it implied a Power in the Duke, to puniſh *Diſobedience* and Contempt of his *Command*: Which was Repugnant, or Inconſiſtent with the Claim itſelf; For, *What needed he to Claim, or Petition for that Thing, which he could Command?* and yet thoſe Writers, who have Aſſerted other Abſurdities, have been equally abſurd, in Aſſerting, *That the Duke's Claim was not a* Petition *to the Lords in Parliament, although he did not* Command, *but Deſired, and Prayed them to give an Anſwer, to the Writing, Containing his Claim.*

The Lords ſent for the Judges, and Demanded to know of them, *What was the Law of the Land, in this Caſe?* to which the Judges Anſwered, *That the Matter in Queſtion was Matter of State and Government, determinable only by the Eſtates in Parliament, and not in the ordinary Courts of Juſtice; That the like Queſtions had been determined by the two Eſtates of Lords and Commons, in the Caſes of the two Kings* Edward II. *and* Richard II. *whereas the Duke of* York's *Claim, in this Caſe, imported a Diſavowing or Contradicting the Legality of thoſe Determinations; and, therefore, the Queſtion was improper, to be Demanded of the Judges, becauſe no proper Anſwer could be given, without* Judging, *whether their Maſter King* Henry VI. *were lawful King, or not*, which was an abſurd Enquiry, and inconſiſtent, not only with their Commiſſion, but their Oaths; and, moreover, to call in Queſtion, and to *Judge, Whether the two Eſtates of Lords and Commons, did* **Right or Wrong**, *in declaring the Throne to be Vacant, and calling* Henry *of*

Boling-

Bolingbrook *Duke of* Lancaſter *to the Government, which was a Matter above, and not in their Juriſdiction* : The *Judges*, therefore, *Declined* to intermeddle, and the Lords then, ſent for the King's Serjeants and Counſellors at Law, and *Demanded*, to know of them, *What was the Law in this Caſe?* but They, in like Manner, and for the ſame Reaſons, Declined, and Refuſed to Intermeddle.

In this perplexed Conjuncture, the Duke of *York* procured a **feint** Defence, or Anſwer in Writing, for King *Henry*, to be brought into the Houſe of Lords; in order to bring the Queſtion to an Iſſue, and into Debate before them: By which Anſwer, it was *feignedly* inſiſted, *That the Duke of* York's *Claim and Title was Defeated.*

I. *By the Oaths of Allegiance, taken by the Lords, and, amongſt them, by the Duke himſelf, to King* Henry VI. *as lawful King, which ought not to be, by any Means broken.*

II. *By the many Acts of Parliament made, in divers Parliaments held by this King, and by his Progenitors, the Kings* Henry IV. *and* V. *touching the State and Government, and touching divers Intails of the Crown, to the Heirs Male of that Family.*

III. *That the Duke of* York *had borne the Arms of the* Mortimers, *and not the Arms of the Royal Family of the* Plantagenets, *which amounted to a Diſclaimer.*

IV. *That King* Henry IV. *when he took upon him the Crown, ſaid,* he claimed the ſame, as Right Inheritor to King *Henry* III. and not as Conqueror.

But this fictitious Writing, omitted King *Henry*'s beſt Title; which had been Acquired, and Derived by and from the Conſtitution, and the Law of the Land.

To which Anſwer of the King, the Duke of *York* exhibited to the Lords in Parliament, a written *Replication*, wherein he inſiſted;

I. *As to the Oaths; That every Man is bound to obey the Law of God; by which Law, Truth and Juſtice are to be obſerved, and Untruth and Injuſtice to be Repreſſed.*

II. *That of his Obedience to God's Law, no Man can diſcharge himſelf by his own Act or Deed, or by any Promiſe or Oath.*

III. *That an Oath made by one Perſon, to the Hurt of another, contrary to Truth and Juſtice, is void.*

IV. *That the Nature of an Oath, is to confirm, and not to impugn Truth.*

V. *That by the Oath of Allegiance, no Man is bound to do an unlawful Thing.*

VI. *That the Duke, notwithſtanding his Oath, might purſue his Right, and all Perſons ought, by the Law of God and Man, to aſſiſt him, notwithſtanding any Oath of Fealty, to any other by them before made.*

As to the Acts of Parliament made in the Parliaments held by the three *Henry's*, the Duke, in his Replication, plainly and fully confeſſed and admitted, *That all the Acts and Statutes made in their Parliaments, and to which the three Kings*, Henry IV. V. *and* VI. *had given their Royal Aſſent, were good and ſufficient Laws, to bind all Perſons, except him only who was Right Inheritor of the Crown, as ſuch Right accorded with the Law of God.*

As to the abſtaining from bearing the Arms of the *Plantagenets*, or Kings of *England*, he ſaid, *He abſtained from bearing thoſe Arms, for the ſame Cauſes, as he abſtained from claiming and purſuing his Right and Title to the Crown, which Cauſes* (Meaning his Fear of the Regnant Powers) *were not unknown to any Man; and that although Right might, for a Time, reſt in Silence, yet it never dies or periſhes.*

As to *Henry* of *Derby* and Duke of *Lancaſter's* Claim of the Government, as Right Inheritor to King *Henry* III. and not as a Conqueror;

The Duke of *York* replied, *That that Saying, was only to ſhadow and colour his wrongful and violent Uſurpation, and, by that Means, to abuſe the People.*

And

And the Duke called on the Lords, to have a haſty and ſpeedy Anſwer to theſe Matters, which concerned his Right and Title to the Government.

SECT. X.

THIS Suit, and theſe Queſtions, ſo put in Iſſue, to be Tried by the Lords in Parliament, being of greater Importance, than any, that had ever come before that Judicature, the Debates were many and long.

The Arguments for the Duke of *York*, were to this Effect;

That the Duke's Kindred and Deſcent from the eldeſt Son of King Henry III. *and the now King's Kindred and Deſcent from the ſecond Son of the ſame King* Henry III. *were both evident and unqueſtionable.*

That the Duke's Right to the Regal Office, or the Government, differed not from a common Perſon's Right to his Manor of Dale; *and that although there was a Limitation of Time, and other Rules appointed, by human Laws, to bar a Man's Right to his Manors and Lands, yet there was no ſuch Limitation or Rules appointed by Law, to bar the Right to the Regal Office, or Government of* England.

That as to Oaths, it was Argued, *That if a younger Brother Enters upon a Manor, and claims to be Lord of that Manor, and the Tenants do Homage, and ſwear Fealty to him, as Lord, yet thoſe Oaths of the Tenants, do not hurt the Title of the elder Brother, becauſe the elder Brother's Right, doth not depend, nor was founded, on the Gift or Concurrence of the Tenants; and that when-ever the younger Brother, happens to be diſpoſſeſſed, or evicted by the elder, the Oaths of the Tenants ceaſe and vaniſh*: And ſo, in like manner, it was argued, *That if the elder Brother acquired Lands within the ſame Manor, and ſhould ſwear Fealty to his younger Brother, as preſent Lord of that Manor, that Oath doth not give away the elder Brother's Right to the Manor itſelf.*

It was argued, *That the Right and Title of the elder Brother, being evident, and founded in Truth and Juſtice, God's Law*

Law intervened, and commanded Truth and Juſtice to be maintained, and prohibited the contrary.

And that the Oaths of Allegiance, to King Henry VI. *were compared to inferior Oaths of this Nature.*

The Arguments againſt the Duke of *York*'s Title, were to this Effect:

It was argued, *That the Word Crown,* if it meant only, a Golden Piece of Workmanſhip to be put on the Head, *was of no Signification; becauſe if it were melted down, and diſſolved, a new one might be made; but it was the ſupreme Office and Power to Govern, that was meant, whenever the Word* Crown *was made Uſe of.*

That the Right and Title to Govern England, *which is the ſame Thing as the Right and Title to the Regal Office,* viz. To ſit on the Throne, and Enjoy, or Exerciſe the Government, *did bear no Similitude with a Man's Right to his Manor of* Dale, *becauſe the Original Conſtitution, and Law of the Land, had conferred the Government, or the Right and Power to Govern, on the King, or ſupreme Governor, in Truſt, or as a Truſtee for the People, obliging the Governor to Govern, according to the Forms and Rules, for that Purpoſe Inſtituted; and that the wearing the material Crown, was but an Enſign, or Ornament of the ſupreme Dignity; That the ſupreme Governor being ſo Intruſted, had no ſuch Propriety or Dominion, in the Government, as a Man had over his Manor of* Dale, *Either to Abuſe the Nation, or People, contrary to the Laws of the Land, or to give or ſell away the Government, although he might Demiſe, or Abdicate, or Renounce the Government in his Life-time, and leave the Throne Vacant, and the Nation without a Government; And that, in ſuch a Caſe, he could have no Heir in his Life-time; for* Nemo eſt Hæres Viventis.

Whereas a Lord of a Manor hath, by the known Laws of the Land, ſuch a Propriety and Dominion in, and over his Manour, that he may Uſe, or Abuſe it, at his Pleaſure; he may deſtroy his Woods, ſpoil his Houſes, and, more than all, he may give or ſell away the Manor itſelf, from his Heirs and Deſcendants; and as to the Rights of Succeſſion to Manors and Lands, the Laws of the Land, had Inſtituted theſe Maxims, *That whoſoever will claim Lands by Deſcent, muſt make himſelf Heir*

to him that was laſt ſeized of thoſe Lands; and that no Man can be Heir to another Man that is living; And, moreover, the Law of the Land had Inſtituted different Forms of Succeſſion to Lands; for, in ſome Places, the whole Inheritance ſhall deſcend to the eldeſt Son; in others, to the youngeſt; and, in others, to all the Sons in Gavelkind alike, or in Equality.

So that the Right and Title to the Government, and the Right and Title to a Manor or Lands, did ſubſiſt upon different Laws and Rules of Property, and were, in no ſort, like the one to the other; for the King being only a Truſtee, cannot Exerciſe the like Dominion over this Nation or People, as a Man may over his Manor and Lands.

It was argued, *That no Man could ſhew any Law of God, that doth direct or command, what Right any particular Man, or Race of Men, ſhould have, in the Succeſſion to the Government of* England, *or how, or to whom, or in what manner, the Succeſſion ſhould go, or how the Government ſhould be ſupplied, when a Defect in the Exerciſe of it ſhould happen, or how, or with what Perſon, the Throne, when Vacant, ſhould be filled.*

It was argued, *That the Duke of* York *had not ſhewed any Law of* England, *to maintain his Claim*; for if common Uſage was Evidence to prove the Law, then the conſtant Uſage diſproved any ſuch Law; and as to the Law of God, no Man could ſhew any ſuch Law, as directed any Form or Qualification to be obſerved in the Succeſſion to the Government of *England*, whereby it could be proved, That the preſent *Lancaſtrian* King, and his Iſſue, ought to be Removed, to make Room for the Duke *York*, and his Iſſue, to ſucceed to the Government.

Neither was there any Law of God, which had directed any Form or Mode in the Succeſſion to the Government, or Crown of *France*, where their Conſtitution excluded the Rights of Blood in the Females; or in the Succeſſion to the Government of *Poland*; or to the Imperial Government in *Germany*, where Elections only, Inſtituted and gave Right to Succeſſors.

It was admitted, That the Laws of God had commanded Obedience to Kings, or ſupreme Governors, in every Nation; and, in particular, whoever was that King, Governing accord-

ing to the Conſtitution, or human Laws of this Country, had Truth and Juſtice on his Side, and was Intituled to that Obedience, which the Law of God commanded; But as to the *Perſons*, who were to be Kings, or ſupreme Governors, the Laws of God were ſilent, and had left all Countries and People, to Inſtitute ſuch Forms of Government, and ſuch Manners and Rights of Succeſſion to that Government, as each Nation deemed beſt; And if the Laws of God had commanded Obedience to ſuch *Britiſh* Kings, and to ſuch Succeſſors to this Government, as the Conſtitution, and Laws of *Britain* had Inſtituted (as doubtleſs it had, in general Terms) then all the Duke of *York's* Arguments, inferred from the Laws of God, failed, and could afford him no Aſſiſtance:

And the rather, ſince King *Henry* III. in whom the Duke of *York*, had centred the Right, and from whom he now derived his Hereditary Title, had not (if the Duke's Arguments were true) any Right or Title himſelf, until after the Death of the Lady *Eleanor* before named, whoſe Right was ſuppreſſed, by King *Henry* III's Impriſoning her in *Briſtol* Caſtle, during the firſt Twenty-five Years of his Reign, and more eſpecially ſince King *Henry* III. after the Lady *Eleanor's* Death, could not have, or pretend to have, any Hereditary Right, but what he derived from, and under *William* the Conqueror: Whereas the Conqueror himſelf, had not, nor could claim, any good Title, but what he derived from this Conſtitution, and from his entering into the Original Contract; for he was a perfect Alien, and Stranger to the Crown, and had got Poſſeſſion by Force and Violence.

But, above all, it was Argued, *That when King* Richard II. *had, by Miſgovernment, broken the Original Contract, and abdicated the Government, which made the Throne vacant, the two Eſtates of Lords and Commons,* (in whom the Power of Reinſtituting the Regal Eſtate, and filling again the vacant Throne, reſided) *were not obliged to call* Edmund Mortimer *Earl of* March, *or, after his Death, without Iſſue, his Siſter* Anne Mortimer *Dutcheſs of* York, *to the Government; but had juſtly, according to their Original, and Unextinguiſhable Authority and Power, to ſupply the Defects of Government, preferred* Henry *of* Bolingbrook *Earl of* Derby, *and Duke of* Lancaſter, *and declared him to be King, or Supreme Governor, becauſe he had Conducted and Reſcued the People, from under the Tyranni-*

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cal Government of King Richard II. *and Reſtored the Conſtitution ; and that therefore King* Henry IV. *and his Deſcendants, were Conſtitution Kings, and had, againſt all other Claimants, according to the Law of God, and the Laws of the Land, Truth, Right, and Juſtice on their Side* ; For it did not lie in the Duke of *York's* Mouth, to ſay, *That he was, by Lineal Deſcent, Right Heir to the Government, and ought not to ſuffer Inconveniencies, for his Anceſtor King* Richard *the Second's Breaches of the Original Contract*, no more than it lies in the Mouth of the Sons of *Adam*, to ſay, *They ought not to ſuffer, or be excluded from Paradiſe, becauſe their Anceſtor*, Adam, *and not they, had offended, by Eating the forbidden Fruit.*

It was Argued, *That the Duke of* York *himſelf, had made a Conceſſion, which juſtified, all that had been before objected and inſiſted on ; to wit*, That the Regal and Legiſlative Power of the three *Lancaſtrian* Kings, had made Good, Effectual, and Legal Statutes or Laws, by giving thereto the Royal Aſſent ; and that thoſe Acts did Legally and Effectually bind all Perſons, and all Rights whatſoever.

But the Duke of *York* endeavoured to evade the Force of his own Conceſſion, by pretending, *That the Legal Authority of thoſe Statutes, did not bind the Right Inheritor of the Government* ; as if the Legiſlative Authority were capable of Diviſion or Fractions ; *And that the ſame King might have a Legal Legiſlative Power and Authority for all Purpoſes*, except for binding the Succeſſion to the Government, than which nothing could be more Repugnant, or Inconſiſtent, or leſs Deſerved an Anſwer.

It was Argued, *That the Conſtitution had not Inveſted, or Intruſted the Houſe of Peers with any Juriſdiction, to hear or determine the Duke of* York's *Claim of Right to the Crown of* England, *or to decide, in their Judicial Capacity, the Queſtion between the Duke and King* Henry, becauſe the Conſequences of ſuch a Judicature would, in Relation to the other two Eſtates, the King and the Houſe of Commons, introduce into the Conſtitution, a monſtrous Inconſiſtency, by giving to that one Eſtate, a Power to bind the other two, and to impoſe ſuch a Government over the Nation, as pleaſed them ; and that therefore, if no ſuch Judicature, Reſided in the Houſe of Peers, much leſs could any Inferior Court, pretend to any ſuch Juriſdiction.

SECT. XI.

Upon the whole, the Houſe of Peers, for theſe Reaſons, Declined and Refuſed to Proceed, in their Judicial Capacity, or to meddle further, with the Duke of *York*'s Claims or Pretenſions; however, this Refuſal to proceed in the Determination of that Claim, **Be it for Want** of Power or Juriſdiction, in that High Court; **or Be it for Want** of Right in the Suitor (the Duke of *York*'s Claim) it was the ſame Thing, and amounted to a *Determination, That the Duke of* York *had no* **Remedy** *to recover his pretended Right* (if he had any) *in any Court whatſoever*; The Conſequence whereof was, *That a pretended Hereditary Right to this Government, which was not by Law recoverable, in any Court or Place whatſoever,* **was no Right at all**; and that as the Conſtitution, in the Formation of this Government, had not *Provided* any Court of Judicature, wherein, or any Remedy whereby, ſuch a *Right* could be Demanded, Sued for, or Recovered; ſo the Conſtitution had not Given, or Created, or Inſtituted, any ſuch *Indefeazible Hereditary Right* to this Government, as the Duke of *York* Reſted his Claim upon.

The Duke of *York*'s Caſe, being of this Nature, that altho' he was of the Royal Family, yet ſince there was no Law in *England*, which gave him an *Hereditary Right* to the Government; or, which was all one, no *Remedy* to recover any ſuch Right; it therefore followed, *That he, the Duke of* York, *as having no Right, was a mere* **Pretender.**

SECT. XII.

WHEREUPON the Duke perceiving, this Defect in his Title, he changed his Dreſs, and applied to the Lords of Parliament, in their Legiſlative Capacity, Repreſenting the Nation's miſerable Condition, by Reaſon of the King's Incapacity to Govern, and Requeſting, *That*, although his Right was as bad as no Right, for Want of a Remedy to Recover it, *they would Conſent to the Making of a New Law, to give him a Right and Remedy*: Which he had not before.

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The Lords being Oppreſſed, and Tired with the Government, as the ſame was Arbitrarily Adminiſtred by the Queen and her Cabal, condeſcended to the Duke of *York*'s Requeſt; and, to Favour him, they agreed to act, in this Caſe, in their Legiſlative Capacity; and although, in Conſideration of the Great Renown of the Kings *Henry* IV. and V. this King's Father and Grandfather, they would not join in Declaring the Throne **Vacant**, yet they would join, and *did* join, in Making a State-Contract or Settlement of the *Succeſſion*, and in Reducing that Contract into Writing, and in Paſſing the ſame into a Law, or into the Act of Parliament, after mentioned, *viz.*

By an Act of Parliament made in the 39th Year of King *Henry* VI. to which King *Henry* himſelf Gave, (and the Duke of *York* himſelf Submitted, that he, as King, ſhould Give) the Royal Aſſent; **It was Enacted**, *That he, King* Henry, *ſhould be had, reputed, and taken to be, King, during his Life, and that the Duke ſhould be, and be proclaimed Heir apparent to the Government, and* **Regent**, *during the King's Life; with this expreſs* **Proviſo**, *That if King* Henry *either died, or forfeited, or ceaſed, or demiſed the Government, by Breaking or* Violating *any Point of that* Parliamentary *Contract or Settlement; then the ſaid Government, and the Royal Dignity of the ſupreme Governor, ſhould immediately be* **Devolved** *upon the Duke of* York, *and the Heirs of his Body, Excluding thoſe of King* Henry.

And in the ſame Parliament, another Act paſſed, whereby the Principality of *Wales* was Granted to *Richard* Duke of *York*, for the preſent Support of his Eſtate and Dignity, as Heir apparent to the Crown.

SECT. XIII.

IN Purſuance of this Act of Parliament, the Duke of *York* was proclaimed Heir Apparent, to the Government or Crown, and Regent or Protector of the Realm, during King *Henry*'s Life.

The Protector (Duke of *York*) ſent the King's Letter, to the Queen, then in *Scotland*, Commanding her to repair to the King at *London*, which ſhe (having about her competent Forces, compoſed moſtly of *Scots*) Refuſed; and thereupon the Pro-

tector, Duke of *York*, took 5000 Men from *London*, and haſtily marched down into the North, to *Sandal-Caſtle* near *Wakefield* in *Yorkſhire*; where, miſtaking the Strength of the Queen's Forces, and depending too much on his own Courage and good Fortune, he raſhly marched out, Encountered the Queen's Army, with unequal Numbers, at *Wakefield*, and was there killed in Battle, and the Queen became Victorious.

SECT. XIV.

BUT ſoon after this Battle, *Edward* Earl of *March*, Eldeſt Son to the Duke of *York*, was Victorious over *Jaſper Tudor* Earl of *Pembroke*, and *James Butler* Earl of *Ormond*, (Adherents to the Queen and her Husband, the Captive King *Henry* VI.) in a Battle fought at *Mortimer's-Croſs*, near *Ludlow* in *Shropſhire*.

The Queen, with her Victorious Army, marched from *Wakefield* towards *London*; and, at St. *Alban's*, fought a ſecond Battle, and obtained a Great Victory, over the Duke of *Norfolk*, and the Earl of *Warwick*, and other Partizans of the Houſe of *York*, who were betrayed by *Lovelace* their own Commander of the *Kentiſh* Men, and the Queen here, Reſcued King *Henry*'s Perſon from being a Priſoner in the *Yorkiſt*'s Army.

But the City of *London*, in Fear of being plundered by the *Scots*, and by the Queen's Northern Army, after the Manner they had plundered St. *Alban's* and other Places, refuſed to aſſiſt the Queen, or to ſupply her Army at St. *Alban's*, hat was then in the utmoſt Want of Proviſions; which forced her, and her Victorious Army, to retire Northwards, after ſhe had left behind her, ſome Marks of Cruelty and Reſentment.

The Victorious *Edward* Earl of *March*, marched from *Ludlow*, and without turning aſide to Encounter the Queen's Army, he Entred *London*, where the Joy for his Coming, was Univerſal.

Now the Time was come, when it was Incumbent on *Edward* Earl of *March*, Son and Heir of *Richard* Duke of *York*, to Exhibit to the People, his Title, and to ſhew, upon what Foot, he **Claimed** the Government: But knowing, how his Father's Claim, by mere Hereditary Right, had proved Fruitleſs and Ineffectual, he wiſely Exhibited to the People, who were Aſſem-

Assembled for that Purpose, his *Parliamentary Right*, by Virtue of the said Statute for settling the **Succession**, whereby it was Enacted, *That the Government should immediately* Devolve *upon the said* Richard *Duke of* York, *and the Heirs of his Body, if King* Henry *should Break or Violate, any Point of that Parliamentary Contract or Settlement*; and Insisted, *That King* Henry *had broken the Terms and Conditions of that Contract or Establishment, which the* Slaughter *of his Father, the Duke of* York, *at the Battle of* Wakefield, *did sadly manifest*: And thereupon the People, consisting of Lords and Commons, Unanimously Adhered to this Constitution, or Parliamentary Right of **Succession**, and Declared, and Proclaimed, *Edward* Earl of *March*, to be King, by the Name of *Edward* IV. and to have a Constitution, or Parliamentary Right of Succession to the Government of *England*, to him, and to the Heirs of the Body of his Father, *Richard* late Duke of *York*.

SECT. XV.

THESE Proceedings manifestly prove, That the substantial Claims of the *Yorkish* Family, were founded on this Constitution, and on a Parliamentary Settlement of the **Succession**; for the Duke of *York*'s Claim, by a mere Hereditary Right, which he had, at first whispered, before the Arguments Accrewed to him by King *Henry* VI's **Breaches** of the Constitution, were of no Efficacy or Advantage; Neither were those *Claims* afterwards, the Efficient Cause of his eldest Son, the Earl of *March*'s Accession and Exaltation to the Regal Government: His being a Branch of the Royal Family, was considered only, as a Qualification, to call him to fill the **Vacant** Throne, which had not become *Vacant*, if the Constitution had not been, by Male Administrations, Violated and Subverted.

These Proceedings likewise confute all those Writers, who build so many Notions, and Positions upon the Hereditary Right of the House of *York*, preferable to the House of *Lancaster*, when, in Fact, the **Constitution**, and not an Hereditary Right, Raised the *Yorkists* to the Government, and placed them on the Throne.

SECT.

SECT. XVI.

BEFORE the Breaches in this Reign, are parted with, the Manner how the Adminiſtration of the Government came to be changed, upon the Queen's Marriage, from a Legal, to an Arbitrary Exerciſe of the Regal Power, deſerves to be obſerved and deſcribed; It is therefore to be Remembred, That the Queen was a Niece of the *French* Queen, and came out of a Country, where that Plant called Arbitrary Power, being one of the Branches of the Civil Law, preſides and flouriſhes: She found, That although the King her Husband, was of competent Years, yet he continued a Child, in Abilities to Govern; and, in order to raiſe her own Power, ſhe Inſiſted and Infuſed into her Favourites, That the Duke of *Glouceſter*'s Adminiſtration, according to the Strictneſs of the National Laws, was Mean, and Below the Dignity of that Sovereign Power and Dominion, which the Civil Law conferred on the King's Perſon; and therefore ſhe Countenanced ſuch Proceedings, as looked Imperious, and Abſolved from all Reſtrictions: But thoſe Foreign Notions and Practices, brought her Husband's Perſon and Government into a Diſeſteem, and ſo into a Want of the People's Aſſiſtance, which they, in their Turn, thought was unreaſonable, in thoſe Circumſtances, to be given or expected.

The Character which this Queen acquired by her Undertakings, ought, for the Inſtruction of Poſterity, to be repreſented; (to wit) That the People apprehended her, to be Faithleſs and Implacable, and could not Truſt or Confide in her, or in any of her Promiſes or Declarations; for when King *Henry* VI. offered *Richard* Duke of *York*, and his Partizans, *a full and general Pardon*, They anſwered, *There was no* **Truſting** *to the King's Pardons, ſo long as the Queen*, whoſe Temper was Bloody, Inſincere, and Implacable, *was Predominant*; and this Character ſhe made good at the ſecond Battle at St. *Alban*'s, wherein ſhe was Victorious, upon this Occaſion: When the Duke of *Norfolk*, the Earl of *Warwick*, and other Lords, in the *Yorkiſts* Army, ſaw themſelves Betrayed by *Lovelace*, their own Commander of the *Kentiſh* Forces, they Fled, only the Lord *Bonville*, and Sir *Thomas Kyriel*, who had behaved well towards King *Henry*'s Perſon, in his Confinement, went in a complimental

complimental Manner to the King, to excuſe their leaving his Majeſty, and flying away.

But the King Importuned them to ſtay, giving them his Royal Word for their Safety; upon which, they relied, and ſtayed; but the Queen's Cruel Temper and Power, being Predominant, ſhe over-ruled the Royal Word, and cauſed both their Heads to be ſtrucken off, which was an unqueſtionable Evidence, that the King's Incapacity to Govern, was Natural.

SECT. XVII.

THE Facts above Stated, from whence it may be argued, *That the Family of* York, *were Advanced to the Government, not by an Hereditary, but by a Parliamentary Settlement of the* Succeſſion, *will be beſt Illuſtrated by Copies,*

I. Of the Act of Parliament of 39 *Henry* VI. herein after Inſerted.

II. Of the Proceedings in the firſt Parliament of King *Edward* IV. for Recognizing his Title.

But it is to be obſerved, *That the Duke of* York *took ſpecial Care to omit out of his Claim and Title, not only all the Arbitrary Acts of King* Richard II. *whereby he had Broken the Original Contract, Abdicated the Government, and Vacated the Throne, but all the Proceedings of the Two Eſtates of Lords and Commons, upon, and for thoſe Breaches.*

And yet, nevertheleſs, the Duke Applied to the Two Eſtates of Lords and Commons, in theſe Times of Diſtraction, when the like Male Adminiſtrations were Repeated, requeſting them, *To call him to the Government*; which they, for the Reaſons aforeſaid, complied with, Leaving it to him to Shape his own Claims, as before is Repreſented.

The ACT *of Parliament of* 39 HENRY VI. *for ſettling the Succeſſion; which was framed and contrived, by* RICHARD *Duke of* York, *and his Party, During the Time that King* HENRY VI. *was his Captive.*

MEMORANDUM, quod die *Martis* ſeptimo Die *Octobris*, Anno Regni Regis *Henrici* ſexti poſt conqueſtum triceſimo nono ipſo Domino Rege in Camera Depicta infra Palacium ſuum *Weſtm'* Regali ſolio reſidente, Preſentibus etiam quampluribus Prelatis & Proceribus & Communibus Regni *Anglie* ad Parliamentum tunc ibidem ſumonitum auctoritate regia convocatis, venerabilis Pater *Georgius* Epiſcopus *Exon'* Cancellar' *Anglie* cauſam ſummonitionis Parliamenti predicti, de mandato ipſius Domini Regis, notabiliter declaravit aſſumens pro ſuo Themate, Congregate Populum, ſanctificate Eccleſiam, *Johelis* ſecundo.

X. Mem. the Duke of York was not ſummon'd to this Parliament.

MEMORANDUM that the 16th Day of *October* the 9th Day of this preſent Parliament, the Counſell of the Right High and Mighty Prince *Richard* Duc of *Yorke*, broughte into the Parliamente Chambre a Writinge conteigninge the Clayme and Title of the Righte, that the ſaide Duc pretended unto the Corones of *England*, and of *France* and Lordſhippe of *Irelond*, and the ſame Writinge delivered to the righte reverent Fader in God, *George* Biſhop of *Exceſter*, Chauncellor of *England*, deſireing that the ſame Writinge might be opened to the Lords *S.* and *T.* aſſembled in this preſent Parliament, and that the ſaid Duc might have brief and expedient Aunſwere thereof; whereupon the ſaid Chauncellor opened and ſhewed the ſaid Deſire to the Lordes *S.* and *T.* askinge the Queſtion of them, *Whether they wold the ſaide Writeing ſhuld be openly radd before them or nooe?* To the which Queſtion it was aunſwered and agreed, by all the ſaide Lordes in aſmoche as every

every Perſone highe and lowe, ſuinge to this highe Courte of Parliamente, of Righte muſte be herde, and his Deſire and Petition underſtand, that the ſaide Writinge ſhuld be radd and herde, not to be aunſwered, without the King's Camaundement, for ſo moche as the Matter is ſo highe, and of ſo grete Weight and Poyſe; which Writing there then was radd, the Tenor whereof followeth in theis Words;

XI. Exhibitio Tituli Ric. Ducis Ebor' ad Coron.

It is not to be forgotten, that the Righte Noble, and Worthy Prince, Henry *King of* England *the Thirde, had Iſſue, and lefully gate* Edward *his Firſte begotten Sonne, borne at* Weſtminſter *the* xv. *Calend of* Juill, *in the Vigill of St.* Mark *and* Marcellian, *the Yeare of our Lord* MCCXXXIX; *and* Edmonde *his Second gotten Sonne, which was born on St.* Marcell *Day, the Yere of our Lord* M,CC,XLV. *the which* Edward, *after the Death of the ſaid King* Herry *his Fader, entitled and called, Kinge* Edwarde *the Firſt, had Iſſue* Edward *his Firſt begotten Sonne, entitled and called, after the Deceſſe of the ſaide Firſt* Edward *his Fader, Kinge* Edward *the Second, which had Iſſue, and lefully gate the right noble and honourable Prince* Edward *the Third, true and undoubted Kinge of* England, *and of* France, *and Lord of* Irelond, *which* Edward *the Third, true and undoubted Kinge of* Englond, *and of* France, *and Lord of* Irelond, *had Iſſue, and lawfully gate* Edward *his Firſt begotten Sonne Prince of* Wales, William Hatfield *Second begotten Sonne,* Leonell *Third begotten Duc of* Clarence, John *of* Gaunte *Fourth begotten Duc of* Lancaſtre, Edmond Langley *Fifte begotten Duc of* Yorke, Thomas Wodeſtock *Sixte begotten Duc of* Glouceſter, *and* William Windeſore *the Seventh gotten; the ſaide* Edward *Prince of* Wales, *which died in the Life of the ſaide* Edward *Kinge, had Iſſue and lefully gate* Richard, *the which ſucceeded the ſame* Edward *Kinge his Grandfire in Roiall Dignitie, intitled and called Kinge* Richard *the Secund, and died without Iſſue,* William Hatfield *the Second gotten Sonne of the ſaide* Edwarde Kinge *died without Yſſue,* Leonel *the Third gotten Sonne of the ſame* Edward *Kinge, Duc of* Clarence, *had Iſſue, and lefully gate* Phelipp *his only Daughter and Heir, which by the Sacrament of Matrimonie copled unto* Edmund Mortimer, *Erle of* Marche, *had Yſſue, and lefully bare* Rogier Mortimer *Erle of* Marche, *his Sonne and Heir, which* Rogier *Erle of* Marche, *had Yſſue and lefully gate* Edmund *Erle of* Marche, Rogier Mortimer, Anne *and* Alianore, *which* Edmund, Rogier, *and* Alianore, *dyed without Yſſue, and the ſaid* Anne, *under*

the

the Sacrament of Matrimony, copled unto Richarde *Erle of* Cambridge, *the Son of the ſaid* Edmonde Langley *the Fifte gotten Sonne of the ſaid King* Edwarde *as it is afore ſpecifyed, had Iſſue, and lefully bare* Richard Plantagenet *commonly called Duc of* Yorke, *the ſaid* John *of* Gaunte *the Fourth gotten Sonne of the ſaide Kinge* Edward, *and the younger Brother of the ſaide* Leonel, *had Yſſue, and lefully gate* Henry *Erle of* Derby, *which incontynent, after the Time that the ſaid Kinge* Richard *reſigned the Corones of the ſaide Roialmes, and the ſaide Lordſhip of* Irlonde, *unrightwiſely entered upon the ſame, then beinge on live* Edmund Mortimer, *Erle of* Marche, *Sonne to* Roger Mortimer, *Erle of* Marche, *Sonne and Heir of the ſaide* Phelippe, *Daughter and Heire of the ſaide Sir* Leonel, *the third Sonne of the ſaide King* Edward *the thirde, to the which* Edmund, *the Righte and Title of the ſaide Corones and Lordſhippe, by the Law and Cuſtome, belonged. To the which* Richard *Duc of* Yorke, *as Sonne to* Anne, *Daughter to* Rogier Mortimer, *Erle of* Marche, *Sonne and Heire to the ſaid* Phelippe, *Daughter and Heire to the ſaid* Leonel, *the third gotten Sonne of the ſaide King* Edward *the third, the Righte, Title, Dignitie Roial, and Aſtate, of the Corones of the Roialmes of* England, *and of* France, *and of the Lordſhippe and Land of* Irelonde, *of Righte, Lawe and Cuſtome, apperteigneth and belongeth, afore any Yſſue of the ſaid* John *of* Gaunte, *the fourthe gotten Sonne of the ſame King* Edwarde.

XII. And afterwarde, the xviith Daie of *October*, the tenth Daie of this preſent Parliament, the ſaide Chauncellor ſhewed and declared to the ſaid Lords *S.* and *T.* beinge in the ſame Parliament, *Howe that the Counſell of the ſaid Duc of* Yorke, *gretely deſired to have Anſwere of ſuche Writinge, as, upon the* xvith *Daie of* October *laſt paſſed, was put into this preſent Parliament on the Behalfe of the ſaid Duc*, and thereupon, asked the ſaide Lordes, *What they thoughte was to be done in that Matier?* To the which Queſtion, it was Anſwered and Thoughte by all the ſaid Lordes, *That the Matier was ſo Highe, and of ſuch Waighte, that it was not to any of the King's Subgettes, to enter into Conſideration thereof, without his highe Camaundement, Agreement, and Aſſent, had thereto*; and forthermore, *Foraſmoche as the ſaide Duc deſired and required brief and undelaied Aunſwere, of the ſaide Writinge, and in eſchewing and avoidinge of grete and manifold Inconvenience, that were in likely to enſue, if haſtie Proviſion of good Aunſwere in that Behalfe,*

behalfe, were not had; It was thoughte and agreed by all the Lordes, *That they all ſhuld goe unto the Kinge, to declare and open the ſaid Matter unto his Highneſſe, and to underſtand what his good Grace would to be done forther therein*; And thereupon, incontinent all the ſaide Lords *S.* and *T.* went unto the Kinge's high Preſence, and thereunto opened and declared the ſaide Matier, by the Mouthe of his ſaide Chauncellor of *England*, and the ſame Matier by the Kinge's Highneſs harde and conceyved; It pleaſed him to praye and commaund all the ſaide Lords, *That they ſhoulde ſerche for to fynde, in as much as in them was, all ſuche Things, as mighte be objecte and laied agenſte the Clayme and Title of the ſayde Duc*; and the ſaide Lordes beſought the Kinge, *That he would remember him, if he mighte finde any reaſonable Matier, that mighte be objected agenſt the ſaide Clayme and Title, inſomoche as his ſaid Highneſs had ſeen and underſtonden many divers Writings and Cronicles.* Whereupon, on the Morne the xviiith Daie of *October*, the xith Daie of this preſent Parliament, the foreſaide Lords ſent for the King's Juſtices into the Parliament Chamber, to have their Avis and Counſell in this Behalfe, and there delivered to them, the Writinge of the Cleyme of the ſaide Duc, and in the King's Name, gave them ſtraitly to, in Commaundment, ſadly to take Aviſament therein, and to ſerche and fynde all ſuche Objections, as might be laide agenſt the ſame, in forteſienge of the King's Righte.

Whereunto the ſame Juſtices, the *Monday* the xxth Daie of *October* then next enſuing, for their Aunſwere upon the ſaide Writinge to them delivered, ſeiden, *That they were the Kinge's Juſtices, and have to determyn ſuche Matters, as come before them in the Lawe, betweene Partie and Partie, and in ſuche Matters as between Partie and Partie, they maie not be of Counſell; and ſithe this Matter was betweene the Kinge, and the ſaide Duc of* Yorke, *as two Parties; and alſo it hath not be accuſtomed, to call the Juſtices to Counſell in ſuche Matters, and in eſpecial, the Matter was ſo highe, and touched the King's highe Eſtate and Regalie, which is above the Lawe, and paſſed their Lerninge; wherefore they durſt not enter into any Conſideration thereof; for it perteined to the Lordes of the Kinge's Blood, and the Apparage of this his Land, to have Comunication, and medle in ſuche Matters, and therefore they humble biſoughte all the Lordes, to have them utterly excuſed of any Avice or Counſell, by them to be geven in that Matter.*

And then the ſaide Lordes conſideringe the Aunſwere of the ſaide Judges, and entendinge to have the Advice and good Counſell of all the King's Counſellors, ſente for all the King's Serjeants and Atturney, and gave theim ſtraighte Camaundement, in the King's Name, *That they ſadley and aviſely ſhuld ſerche and ſeke all ſuche Things as mighte be beſt and ſtrengeſt, to be alleged for the King's Availe, in Objection, and defeteinge of the ſaide Title and Clayme of the ſaid Duc.*

Whereunto the ſaide Sergeants and Attourney, the *Wenſdaie* then next iſſuinge, aunſwered and ſeiden, *That the ſaide Matter was put unto the King's Juſtices, and how the* Mondaie *then laſte paſſed, the ſame Juſtices ſeiden and declared to the ſaide Lordes,* That the ſaid Matter was ſoo highe, and of ſo grete Weighte, that it paſſed their Learning; *And alſo,* They durſt not enter any Conſideration in that Matter, to geve any Avice or Counſell therein: *And ſithe that the ſaide Matter was ſo highe, that it paſſed the Learninge of the Juſtices, it muſt nedes excede theire Learninge;* And alſo, *They durſt not enter any Conſideration in that Matier, and praied and beſoughte all the Lordes, to have them excuſed, of gevinge any Avice or Counſaill therein.*

To whom it was aunſwered, by the Avice of all the Lordes, by the ſaid Chauncellor, *That they mighte not be ſo excuſed, for they were the King's particular Counſaillors, and therefore they hadd theire Fees and Wages.* And as to that, the ſaid Sergeants and Attourney ſeiden, *That they were the King's Counſaillors in the Lawe, in ſuche Thinges as were under his Auctoritie, or by Comiſſion; but this Matter was above his Auctoritie, wherein they mighte not medle; and humblie beſoughte the ſaide Lordes, to have them excuſed of gevinge any Counſell in that Matter:* And it was aunſwered againe, *That the Lordes woulde not hold them excuſed, but let the Kinge's Highneſs have Knowleche what they ſaide;* and thereupon the ſaide Chauncellor remembred the Lordes *S.* and *T.* of the Seinges and Excuſes of the Juſtices, and the Seyinges and Excuſes of the Sergeants and Attourney; and alſo the grete Camaundement of the Kinge's Highneſs, that they had to finde all ſuche Objections, as mighte be moſte mightie to defend the Kinge's Righte and Title, and to defete the Title and Clayme of the ſaid Duc of *Yorke*; and alſo, that the Kinge might underſtande, that the ſaide Lordes diden

diden their true and faithful Devoir and Acquittaill in the ſaide Matter, deſired all the Lordes that everye of them ſhould ſeye what he coude ſeye, in fortefienge the Kinge's Title, and in defetinge of the Clayme of the ſaid Duc, and then it was agreed by all the Lordes, that every Lorde ſhould have his Fredome to ſay what he wulde ſaye, without any Reportinge or Magre to be hadd for his Seyinge; and thereupon, after the Seyinge of all the Lordes, every after other, it was concluded, That thes Matters and Articles hereunder written, ſhuld be Allegged, and objecte agenſte the ſaide Clayme and Title of the ſaid Duc.

Firſte, It is thoughte, that the Lordes of this Londe muſt nedes call to theire Remembrances, the grete Othes the which they have made to the Kinge our Sovereigne, the which may be laied to the ſaide Duc of *York*; and that the Lordes maye not breke thoo Others. XIII. Objectiocontra titulum prædictum.

Item. It is thoughte alſo, that it is to be called to Remembrance, the grete and notable Actes of Parlements made in divers Parlements of divers of the King's Progenitors, the which Actes be ſufficient and reſonable to be leide againe the Title of the ſaide Duc of *Yorke*, the which Actes, been of much more Authoritie, than any Cronicle, and alſo of Authoritie to defeat, any Manner of Title, made to any Perſone.

Item. It is thoughte, that there is to be laide ageyn the ſaide Title, divers Entailes made to the Heires Males, as for the Corone of *England*, as it may appear by divers Cronicles and Parlements.

Item. It is thoughte, yf the ſaid Duc ſhould make any Title or Clayme, by the Line of Sir *Leonell*, that the ſame Duc ſhould beare the Armes of the ſaide *Leonell*, and not the Armes of *Edmonde Langley* late Duc of *Yorke*.

Item. It is to be alledged, ageyne the Title of the ſaid Duc, that the Tyme that Kinge *Harry* the Fourth, tooke upon him the Corone of *England*, he ſaide he entred and tooke upon him the Corone, as Righte Inheriter to King *Herry* the Third, and not as a Conqueror.

To the which Articles, the ſaid Duc of *Yorke* gave his Aunſweres in Writinge, as followen.

Here-

Hereunder followen the Aunſweres of *Richard Plantagenet*, called comonly Duc of *York*, *&c.* to certeyn Reiſons and Colours alleged, as it is ſaide, agenſte the Matier of his Righte and Title, *&c.*

XIV. Reſponſiones prefati Ducis ad Objectiones tituli ſui prædicti.

Firſt, where it is ſaide, That it is thoughte, that the Lordes muſt nedes call to their Remembrance, the grete Othes, which they have made to the Kinge, which maie be leide to the ſaid Duc, and that they maie not brooke thoo Othes;

The ſaide *Richarde* aunſwerethe and ſaith, That every Man, *undre the Peyne of everlaſtinge Dampnation*, is bounden to obey to the Lawe and Commaundements of God; by which Lawe and Commaundements, Trouth and Juſtice owe to be preferred and obſerved, and Untrouth and Injuſtice leied aparte, and repreſſed; and ſo it is, That of this Bond and Duetie of Obedience to God's Lawe, no Man maie *diſcharge himſelf* by his own Dede or Acte, Promiſe or Ooth; for elſe, of the contrary, would inſue inumerable Inconvenience. Wherefore, ſithe it is ſoo, that the Mater of the Title and Clayme of the ſaide *Richarde Plantaginet* is openlie true and lawful, and grounded upon evident Trouth and Juſtice, it followeth, That Man ſhold have rather Conſideration to *Trouth*, *Righte*, and *Juſtice* in this Matter accordingly, with the Will of the Lawe of God, then to an *Promiſe or Othe made by him*, into the contrary, conſidered; namely, that by the Lawe and Determination of Holie Church, an Ooth made by one Perſon, unto the Prejudice or Hurte of another, contrarie to Trouth, Juſtice, and Charitie, in the which ſtandeth the *Plenitude and Perfection of God's Lawe*, is voide, and of none Effect, nether in any wiſe Obligatorie, and that the Vertue and Nature of an Othe, is to confirm Trouthe, and, in noe wiſe, to impugne it. And over that, that by the Oothe of Feaute, Homage or Ligeaunce noo Man is bounden to any inconvenient, or unlawful Thing. And howe be it, that this Aunſwere is ſuffiſant to all Maner Objections that maie be made agenſte this Clayme and Entent in this Partie by Reaſon or Occaſion of any Oothe, yet Natheleſs the ſaide *Richarde*, for aſmoche as the *Matter of Oothes* is a Matter Spiritual, for more Declaration of his conſcient Honeſtie and Trouth in this Partie, *offreth* himſelfe redye to aunſwere before any Judge *S.* competent in Place and Tyme covenable to all Mannere of Men, that any Thinge wille purpoſe agenſt him in that Behalfe.

And

And to ſhew clerely that lawfully withouten Offence of God and Conſcience, he maie claime and purſue his Righte, *and deſire Juſtice, in ſuch Foormee* as he dooth, and that all other Perſones, and, namely, the Peres and Lords of this Realme maie, and by *the Lawe of God and Man*, aughte, to helpe and aſſiſte him, in Trouthe and Juſtice, *notwithſtandinge any Othe* of Feaute, or other by him, or theim herebefore made :

Over this, where it is thoughte alſo, that it is to be called alſo to Remembrance, the grete and notable Actes of Parlement, made in divers Parlements, of divers of the King's Progenitors, the which Actes bene ſufficient to be leide agenſt the Title of the ſaide Duc, and of more Authoritie then any Cronicle, and alſo of Authoritie, to defete any Manere Title made to anye Perſone: XV.

And alſo, where it is ſaide, That it is to be leide agenſte the ſaid Title, divers Intailles made to the Heires Males, as for the Corone of *England*, as it maie appeare by diverſe Cronicles and Parlements :

The ſaide *Richard Plantaginet* anſwereth and ſaieth, That in Trouthe there been *None* ſuche Actes and Tailles been made, by any Parlement here-before, as it is ſurmiſed, *but oonly in the* vijth Yere of King *Herry* the Fourth, a certen Acte and Ordenance was made in a Parlement by him called, wherein he maude the Reaumes of *England* and *France*, amonges other, to be unto him, and the Heires of his Body comynge, and to his Foure Sons, and the Heires of their Bodyes comynge, in Manere and Fourme, as it appereth in the ſame Acte; *and if he mighte have obteigned* and reioiſed the ſaide Corones, &c. by Title of *Inheritance*, Diſcent or Succeſſion, *he nether neded*, nor wold have deſired or made them, to be granted to him, in ſuche wiſe as they be by the ſaid Acte, *the which taketh noo Place*, nether is of any Force or Effect *agenſt him that is Righte Inheriter of the ſaid Corones*, as it accordeth with God's Lawe, and all natural Lawes, *howe it be* that all other *Actes* and Ordenances made in the ſaide Parlement, and ſithen, ben good and ſuffiſaunte *agenſt all other Perſones.*

XVI. *Item.* Where it is thoughte, that if the ſaid Duc ſhuld make any Title or Clayme, by the Line of Sir *Leonell*, he ſhuld beare the Armes of the ſame Sir *Leonell*, and not the Armes of *Edmond Langley*, late Duc of *Yorke* ;

The ſaid Duc aunſwereth and ſaieth, That Trouth is, That he mighte lawfully, have borne the Armes of the ſaid Sir *Leonell* here before, and alſo the ſame Armes that Kinge *Edward* the Third bare, that is to ſay, the Armes of the Reaumes of *England* and of *France* ; but he *abſteyned of bearinge* of the ſaid Armes, *like as he* abſteyned for the Tyme, of Purpoſeinge and Purſueinge of his Righte and Title, *&c. For Cauſes not unknowne to all this Reaume ; for thoughe Righte, for a Time, reſte, and be put to Silence, yet it Rotteth not, nor ſhall not Periſhe.*

XVII. *Item.* Where it is alledged agenſt the Title of the ſaid Duc, That the ſaid *Harry* of *Darby*, at ſuche Tyme as he tooke upon him, the Corone of *England*, ſaide, *That he entred and tooke the ſamee Corone upon him, as Righte Enheriter to King the Third, and not as a Conqueror* ;

The ſaid Duc thereto ſaieth, That ſuche Sayinge of the ſaid Kinge *Herry* the Fourth, may, in noo wiſe be true, and that the contrary thereof, which is Trouth, ſhal be largely inoughe ſhewed, approved, and juſtified by ſufficient Authoritie and Matter of Recorde ; and over that, That his ſaide *Sayinge* was *oonly to ſhadowe and colour* fraudulently, his ſaide Unrightwiſe and violent Uſurpation, and by *that Moien, to abuſe* diſceyvablye, the People ſtandinge aboute him.

XVIII. *Item.* The *Saturday* the xvij Daie of this preſent Parlement, it was ſhewed unto the Lordes *S.* and *T.* beinge in this preſent Parlement, by the Mouthe of the ſaide Chauncellor, that the ſaide Duc of *Yorke*, called *Beſilie*, to have haſtie and ſpedie Aunſwere, of ſuche Matters, as touched his Title aboveſaid, **and howe**, that *for aſmoche as* it is thoughte by all the Lordes, that the Title of the ſaide Duc *cannot be defeted*, and in Eſchuinge of the grete Inconvenients that may enſue, a **Meane** was founde to *ſave* the Kinge's Honour and Aſtate, and to *appeaſe* the ſaid Duc if he wuld, **which is this,** That the Kinge ſhall kepe the Corones and his Eſtate and Dignitie Roiall, duringe his Life, and the ſaid Duc, and his Heires, to ſuccede him in the ſame, exhortinge

These are Words of the Duke's contriving

exhortinge and ſteringe all the ſaid Lordes, that if any of them coulde finde any other, or better **Meane**, that it might be ſhewed.

WHEREUPON, after ſad and ripe Conſideration in this Matter hadd, *it was* **Concluded and Agreed,** by all the ſaid Lordes, That ſithe it was ſoo, that *the Title of* the ſaid Duc of *Yorke* cannot be defeted, and in eſchuinge the great Inconvenients that might inſue, to take the *Meane* above reherced, the Othes that the ſaide Lordes had made unto the Kinge's Highnes at *Coventre*, and other Places ſaved, and their Conſcients therein clered; *and over that, it was agreed by the ſaide Lordes*, That the ſaide *Meane* ſhuld be *opened* and declared to the *Kinge's Highnes*; and forthwith they went towards the Kinge, where he was in his Chamber within his Pallace of *Weſtminſter*; **and in theire goinge** oute of the Parlement Chambre, the ſaide Chauncellor asked of the ſaid Lordes, *That ſithe it was ſooe, that the ſaide* Meane *ſhulde be opened by his Mouthe to the Kinge's good Grace, yf they would abide by him, howſoever that the Kinge tooke the Matter*? And all they aunſwered and ſaide, *Yee.*

These are Words of the Duke's framing.

All theis Premiſſes, thus ſhewed and opened to the Kinge's Highnes, *he, Inſpired* with the Grace of the Holie Gooſte, and in Eſchuinge of Effuſion of Chriſtien Bloode, by good and ſadd Deliberation and Avice, hadd, with all his Lords *S.* and *T. Condeſcended to Accorde*, to be made betwene him and the ſaide Duc, *and to be Auctorized* by the Auctoritie of this preſente Parliamente; **The Tenour** of which Accorde hereafter enſuethe in Manner and Fourme followinge.

Concordia facta inter Regem & prefatum ducem.

Bleſſed be Jhu', *in whoos Hand and Bountie reſteth, and is the Peas and Unitie betwixte Prince, and the Wele of every Realme, thurgh whoos Direction* **Agreed** it is, Appointed and Accorded, *as followeth, betwixte the moſte highe, and moſt mightie Prince* KINGE HERRY THE SIXTE, *Kinge of* England, *and of* France, *and Lord of* Irelond, *on that oon Partee*; *and the righte highe and mightie Prince* Richard Plantagenett, *Duc of* Yorke, *on that other Partie*; *upon certayn Matters of Variance, moeved betwixt them*, and in eſpeſciall, upon the Clayme and Title unto the Corones of *England*, and of *Fraunce, and* Roial Power, Eſtate, and Dignitie, *apperteigninge to the ſame,*

ſame, and Lordſhipp of Irelond, *opened, ſhewed, and declared, by the ſaid Duc,* afore *all the Lordes* S. *and* T. *beinge in theis preſent Parlement; the ſaid* AGREMENTE, *Appointment, and Accord, to be* **Auctoriſed by the ſame Parlement.**

Firſte, Where the ſaid *Richard* Duc of *Yorke*, hath declared and opened as above, his ſaid *Title and Clayme*, in Manner as followeth: *That the Righte Noble, and Worthy Prince,* Herry *King of* England *the Thirde, had Iſſue, and lefully gate* Edward *his Firſte begotten Sonne, borne at* Weſtminſter *the* xv. *Calend of* Juill, *in the Vigill of St.* Marc *and* Marcellian, *the Yeat of our Lord* MCCXXXIX; *and* Edmonde *his Second gotten Sonne, which was borne on St.* Marcell *Day, the Yere of our Lord* M,CC,XLV. *the which* Edward, *after the Dethe of the ſaid Kinge* Herry *his Fader, entitled and called, Kinge* Edwarde *the Firſt, had Iſſue* Edwarde *his Firſt begotten Sonne, entitled and called, after the Deceſſe of the ſaide Firſt* Edward *his Fader, Kinge* Edward *the Second, which had Iſſue, and lefully gate the right noble and honourable Prince* Edward *the Third, true and undoubted Kinge of* England, *and of* France, *and Lord of* Irelond, *which* Edward *the Third, true and undoubted Kinge of* Englond, *and of* France, *and Lord of* Irelond, *had Iſſue, and lefully gate* Edward *his Firſt begotten Sonne Prince of* Wales, William Hatfield *Second begotten Sonne,* Leonell *Third begotten Duc of* Clarence, John *of* Gaunte *Fourth begotten Duc of* Lancaſtre, Edmond Langley *Fifte begotten Duc of* Yorke, Thomas Wodeſtock *Sixte begotten Duc of* Glouceſter, *and* William Windeſore *the Seventh gotten; the ſaide* Edward *Prince of* Wales, *which died in the Life of the ſaide* Edward *Kinge, had Iſſue and lefully gate* Richard, *the which ſucceeded the ſame* Edward *Kinge his Grandſire in Roiall Dignitie, intitled and called Kinge* Richard *the Secunde, and died without Iſſue,* William Hatfield *the Secunde gotten Sonne of the ſaide* Edwarde *Kinge died without Yſſue,* Leonel *the Third gotten Sonne of the ſame* Edward *Kinge, Duc of* Clarence, *had Yſſue, and lefully gate* Phelipp *his only Daughter and Heir, which by the Sacrament of Matrimonie, copled unto* Edmund Mortimer, *Erle of* Marche, *had Yſſue, and lefully bare* Rogier Mortimer *Erle of* Marche, *her Sonne and Heir, which* Rogier *Erle of* Marche, *had Yſſue and lefully gate* Edmund *Erle of* Marche, Rogier Mortimer, Anne *and* Alianore, *which* Edmund, Rogier, *and* Alianore, *dyed without Yſſue, and the ſaid* Anne, *under*

the

the Sacrament of Matrimony, copled unto Richarde *Erle of* Cambridge, *the Sonne of the ſaid* Edmonde Langley, *the Fifte gotten Sonne of the ſaid King* Edwarde, *as it is afore ſpecifyed, had Iſſue, and lefully bare* Richard Plantagenet *commonly called Duc of* Yorke; *the ſaid* John *of* Gaunte *the Fourth gotten Sonne of the ſaide Kinge* Edward, *and the younger Brother of the ſaide* Leonel, *had Yſſue, and lefully gate* Henry *Erle of* Derby, *which incontynent, after the Time, that the ſaid Kinge* Richard *Reſigned the Corones of the ſaide Roialmes, and the ſaide Lordſhippe of* Irlonde, *unrightwiſely* Entered *upon the ſame, then beinge on live* Edmund Mortimer, *Erle of* Marche, *Sonne to* Roger Mortimer, *Erle of* Marche, *Sonne and Heir of the ſaide* Phelippe, *Daughter and Heire of the ſaide Sir* Leonel, *the third Sonne of the ſaide King* Edward *the thirde, to the which* Edmund, *the Righte and Title of the ſaide Corones and Lordſhippe, by Law and Cuſtome, belonged. To the which* Richard *Duc of* Yorke, *as Sonne to* Anne, *Daughter to* Rogier Mortimer, *Erle of* Marche, *Sonne and Heire to the ſaid* Phelippe, *Daughter and Heire to the ſaid* Leonel, *the third gotten Sonne of the ſaide Kinge* Edward *the third, the Righte, Title, Dignitie Roial, and Eſtate, of the Corones of the Roialmes of* England, *and of* France, *and of the Lordſhippe and Land of* Irelonde, *of Righte, Lawe and Cuſtome, apperteigneth and belongeth, afore any Yſſue of the ſaid* John *of* Gaunte, *the fourthe gotten Sonne of the ſame King* Edwarde.

All Acts of Abdication are omitted.

All Acts of the Lords and Commons, Declaring Henry IV. to be King, are omitted.

The ſaid Title, Natheleſs notwithſtandinge, and *without Prejudice of the ſame*, the ſaid *Richard* Duc of *Yorke*, tenderly deſireing the wele Reſte and Proſperitie of this Lande, and to ſett a parte all that mighte *be Trouble* to the ſame, and conſideringe the *Poſſeſſion* of the ſaid Kinge *Herrye* the Sixte, and that he hath for his Tyme, *be named, taken, and reputed, Kinge of* England, and of *France*, and Lorde of *Irelonde*, is *content, agreed*, and conſenteth, That he be had, *reputed, and taken Kinge of* Englande, and of *France*, with the Roial Eſtate, Dignitie, and Premynence, belonginge thereto, and Lorde of *Irlond*, during his Life natural, and for that Tyme, the ſaid Duc, *without Hurt or Prejudice of his ſaid Righte* and Title, ſhall *take, wurſhippe*, and honour Him, for his **Soveraigne Lorde.** XX.

Item. The ſaide *Richarde* Duc ſhall promitte and binde him, by his ſolempne Othe, in Manere and Fourme as followeth. XXI.

In the Name of God, Amen. I Richard *Duc of* Yorke, *promitte and ſwere by the Feith and Trouth, that I owe to Almightie God, That I ſhall never dooe, conſent, procure, or ſturre, directly, in prive, or a partener, as muche as in me is, and ſhall be ſuffer to be dooe, conſented, procured, or ſturred,* any thinge that maye be, or ſowne to the Abrigement *of the* natural Life of Kinge *Herry* the Sixte, *or to the Hurte, or* amenuſinge of his Reigne, *or* Dignitie Roial, *by Violence, or any otherwiſe, agenſt his Fredome and Libertee ; but that yf any Perſone, or Perſones, wolde dooe, or preſume any thinge to the contrary, I ſhall, with all my Power and* Mighte, withſtande it, and make it to be withſtoude, *as ferre as my Power wull ſtreche thereunto.* Sooe helpe me God, and thees holie Evangelees.

Item. Edward Earl of *Marche,* and *Edmonde* Earle of *Ruthlond,* the Sonnes of the ſaid *Richard* Duc of *Yorke,* ſhall make like Ooth.

XXII. *Item.* It is Accorded, Appointed, and Agreed, That the ſaid *Richarde* Duc of *Yorke* Rejoiſh be Intitled, Called, and Reputed from hensforth, *verrey and rightful Heir to the Corones,* Roial Eſtate, Dignitie, and Lordſhippe aboveſaid; and after the Deceaſe of the ſaide Kinge *Herrey, or when he wull Ley from him the ſaide Corones, Eſtate, Dignitie, and Lordſhippe,* the ſaid Duc, and his Heirs, ſhall ymediatly *ſuccede* to the ſaide Corones, Roiall Eſtate, Dignitie, and Lordſhippe.

XXIII. *Item.* The ſaid *Richard* Duc of *Yorke,* ſhall have by Auctoritie of this preſente Parliament, Caſtell and Mannors, Landes and Tentes, withe the Wardes, Marriage, Releves, Services, Fynes, Amerciaments, Offices, Advowſons, Fees, and other Appurtenances to them bilonginge, whatſoever they be, to the Yerely Value of X. M. Marks, over all Charges and Repriſes, whereof V. M. Marks ſhal be to his owne Eſtate, III. M. V. C. Marks to *Edward* his firſt begotten Sonne, Earl of *Marche,* for his Eſtate, and III. C. Pounds to *Edmund* Earle of *Ruthland* his ſecunde gotten Sonne, for his Yerely Suſtentation, for ſuche Conſiderations, and to ſuch Intente, as ſhal be declared to the Lordes of the Kinge's Counſell.

XXIV. *Item.* Yf any Perſone or Perſones *Ymagyne or compaſſe the Dethe of the ſaid Duc,* and thereof provably be atteinte of open Deede done, by Folkes of their Condition, that it be demed and adjudged *Highe Treaſon.*

Item.

Item. For the more Eſtabliſhinge of the ſaid Accorde, it is appointed and conſented, That the Lordes *S.* and *T.* being in this preſent Parlement, ſhall make **Dothes** to accepte, take, worſhippe and repute the ſaide *Richard* Duc of *Yorke*, and his ſaide Heires, as above is reherſed, and kepe, obſerve, and ſtrengthe, in as muche as appertaineth unto them, all the Things aboveſaide, and reſiſte to their Power, all thaym, that wull preſume the contrarye, accordinge to theire Eſtates and Degrees. XXV.

Item. The ſaide *Richard* Duc of *Yorke*, Erles of *Marche* and *Ruthlond* ſhall promitte and make **Dthe** to helpe, aide, and defend the ſaide Lordes, and everye of them, agenſte all thoo that wolle quarrell, or anye Thinge attempte, agenſte the ſaide Lordes, or any of them, *by Occaſion* of Agreement or *Conſentinge* to the ſaid Accorde, or Aſſiſtance, givinge to the ſaide Duc and Erles, or any of them. XXVI.

Item. It is agreed and appointed, That this Accorde, and every Article thereof, be opened and notified by the Kinge's Letters Patents, or otherwiſe at ſuche Tymes and Places, and in Manere, as it ſhall be thoughte expedient to the ſaide *Richard* Duc of *Yorke*, withe Th'avis of the Lordes of the Kinge's Counſell.

The Kinge underſtandinge certenly, the ſaide *Title* of the ſaide *Richard* Duc of *Yorke*, *juſte*, *lawful*, *true*, and *ſuffiſante*, by Th'avis and Aſſente of the Lordes *S.* and *T.* and **Commons** in this Parlement Aſſembled, *and*, *by Auctoritie of the ſame Parlement*, Declareth, Approveth, Ratifieth, Confirmeth, and Accepteth the ſaide Title, Juſte, Good, *Lawful*, and True, and thereunto geveth his *Aſſente* and Agrement, his free Will and Libertee, **and** overe that, by the ſaide Advis and *Authoritie* Declareth, Intitleth, Calleth, Stabliſheth, Affirmeth, and Reputeth the ſaide *Richard* Duc of *Yorke*, verey True, and Rightful **heire** to the Corones, Roiall Eſtate and Dignitie of the Reames of *England* and of *France*, and of the Lordſhippe of *Irlond* aforeſaide, and that accordinge to the Worſhippe and Reverence that thereto belongeth, he be taken, accepted, and reputed in Wurſhippe and Reverence, *by all the States of the ſaid Reaume* of *England*, and of all **his** Subjects thereof; **Savinge** and Ordaininge *by the ſame Auctoritie*, the King to have the ſaide Corones, Reaumes, Roiall Eſtate, Dignitie, and Premynence of the XXVII.

the ſame, and the ſaide Lordſhippe of *Irlond*, *during his Life natural*: **And**, ferthermore, by the ſame Advis and *Auctoritie*, well, *conſenteth* and *agreeth*, That after his Deceaſe, or when it ſhall *pleaſe his Highneſs to Ley from him the ſaide Corones*, Eſtate, Dignitie, and Lordſhippe, or thereof *Ceſſeth*, the ſaid *Richard* Duc of *Yorke*, and his Heires, ſhall ymediately **ſuccede** him in the ſaide Corones, Roiall Eſtate, Dignitie and Lordſhippe, and **them then** have, and Joye (*Any Acte of Parlement Statute, Ordinance*, or other Thinge to the contrarye made, or Interruption, or *Diſcontinuance* of Poſſeſſion, *notwithſtandinge*).

And, moreover, by the ſaid Advis and Auctoritie, Stabliſheth, Granteth, Confirmeth, Approveth, Ratifieth, and Accepteth the ſaide Accorde, and all Thinges therein conteigned, and thereunto *frely* and *abſolutely* Aſſenteth and Agreethe.

And by the ſame Advis and *Auctoritie*, Ordeyneth and Eſtabliſheth, That if any Perſone or Perſones *ymagine, or compaſſe* the Death of the ſaide Duc, and thereof provably be attainte of open Dede done, by Folkes of their Condition, that it be demed and adjudged *Highe Treaſon*.

XXVIII. And, ferthermore, Ordeineth, Granteth, and Stabliſheth by the ſaide Advis and *Auctoritie*, That all Statutes, Ordenances and Actes of Parlement, made in the Tyme of the ſaide King *Herry* the Fourthe, by the which, he, and the Heires of his Bodye comynge, or *Herry*, late Kinge of *England* the Fifthe, the Sonne and Heire of the ſaide Kinge *Herry* the Fourthe, and the Heires of the Bodye of the ſame King *Herry* the Fifte comynge, were, or be *inheritable*, to the ſaide Corones and Reaumes, or to the *Heritage*, or Enheritement of the ſame, be adnulled, *repelled*, revoked, dampned, cancelled, voide, and of noo Force or Effecte.

And by the ſaide Advis and *Auctoritie*, the ſame Statutes, Ordynance and Actes of Parlement *Adnulleth, Repelleth, Revoketh, Dampneth, Cancelleth, Voideth, and putteth from all Force and Effecte*.

And over this, the King, by the ſaide Advis, Aſſente, and *Auctoritie* well, Ordeyneth and Eſtabliſheth, *That all other Actes* and Statutes, made afore this Tyme, by *Auctoritie* of any Parlement not

not Repelled nor adnulled by like *Auctoritie*, or otherwiſe voide, be, in ſuch Force, Effecte, and Virtue, as they were afore the Makeing of this Ordenance: **And that noo Letters patents Roiall**, and of Recorde, nor *Actes Judiciall*, made, or done afore this Tyme, not repelled, reverſed, no otherwiſe voide, by the Lawe, be prejudiced, or hurt by this preſent Acte; *So alwey, if there cannot here-after be alleged and proved, a more better and ſufficient Title to the Dignitie*, Defeteinge *of this ſame Acte.*

Memorandum. That after the Agreement of the ſaide Acte of Accorde, by the Kinge *and three Eſtates in this preſent Parlement* Aſſembled, The ſaide Duc of *Yorke*, and Erles of *Marche* and *Rutlond*, in the Vigill of *Allhallowes*, come perſonally into the Chambre of the ſame Parlement, before the Kinge, in Preſence of the Lordes *S.* and *T.* and there, and then, everich of the ſaide Duc and Erles ſeverally, made Promeſſe and Oothe accordinge to the ſaide Agremente of Accorde, withe Proteſtation, *That if the Kinge, for his Parte, duely kepte and obſerved the ſame Accorde, and Acte thereupon* made, which the Kinge at that Time promiſed ſo to doe, and then the ſaid Duc and Erles inſtantlye deſired, That this ther Proteſtation, and alſo the ſaide Promiſe made by the Kinge, *might be entred of Recorde.*

UPON theſe Proceedings it may be obſerved, That the Duke of *York* called his Pedigree, his Title, and that the ſame could not be Defeated: In Anſwer to which, it may be Admitted, That the Truth of his Pedigree, could not be Defeated; becauſe he was really ſo Deſcended: But his Right to the Government was Defeated, and could not be Recovered, otherwiſe than by this Statute for Settling the **Succeſſion**; to which it was Admitted, King *Henry* the Sixth, as King, in the full **Exercise** of the Regal Dignity, Gave, was to Give, and did Give, the *Royal Aſſent.*

And, therefore, this Statute was, in all Reſpects, a **State-Contract**, or Law, for Settling the **Succeſſion.**

THE **Proceedings** in the Firſt Parliament of King *Edward* the Fourth, for *Recognizing* his Title to the *Succeſſion*, were contrived after this Manner;

The KING cauſed a long *Petition* to be framed, and to be preſented by the Commons, to his Majeſty in Parliament; The Form, as it is Entred on the Parliament Roll, is Thus;

MEmorandum, quod die *Mercurii* quarto Die *Novembris*, Anno Regni Regis *Edwardi* quarti, poſt conqueſtum primo; ipſo Domino Rege in Camera Depicta infra Palacium ſuum *Weſtm'* Regali ſolio reſidente, Preſentibus etiam quampluribus Prelatis, Proceribus, & Communibus Regni *Anglie* ad Parliamentum tunc ibidem ſummonitum auctoritate regia convocatis, venerabilis Pater *Georgius* Epiſcopus *Exon'* Cancellar' *Anglie* Cauſam ſummonitionis Parliamenti predicti, de mandato ipſius Domini Regis, notabiliter declaravit aſſumens pro ſuo Themate, Bonas facite vias, & ſtudia veſtra, *Jeremie* ſeptimo.

Declaratio Tituli Regii. MEMORANDUM, quod quedam **Petitio** exhibita fuit, prefato Domino Regi, in preſenti Parliamento, per prefatos communes, ſub eo qui ſequitur tenore verborum.

The *Petition* may be Divided into three Parts.

In the Firſt Part *was ſtated the King's Pedigree, ſhewing*, How he was Deſcended by the Elder Line, from King *Henry* the Third, *in the ſame Manner as was deſcribed in the ſaid Statute of* 39 H. VI. *for ſettling the* Succeſſion.

In the Second Part *of the Petition, were charged on King* Henry *the Fourth, calling him Earl of* Derby, All thoſe Acts, which ought, in Reality, to have been charged, on the two Eſtates of Lords and Commons; who really, and in Fact, had proceeded againſt King *Richard* the Second, for Aſſuming Arbitrary

Arbitrary Power, Breaking the Original Contract, and Abdicating the Government, and, moreover, had filled again the Vacant Throne: *But the Petition prudently omitted to Charge thoſe Facts, as Wrongs done by the Lords and Commons, but paſſed over* Them, *and charged the ſame on King* Henry IV. *as if he alone, had done many Acts of Uſurpation; whereas, in Fact, and in Truth, All that he had done, was done by the* **Invitation** *of the Lords and Commons, and at their Inſtance and Encouragement.*

In the Third Part *of the Petition is truly Stated,* The Foundation on which King *Edward* IV. Grounded his Title to the Government in theſe Words, *omitting thereout, only the opprobrious Words* Uſurper, *becauſe the ſame are not found in the Act of* Succeſſion.

AND where, after theſe, the ſeid Noble Prince *Richard* Duc of *Yorke*, uſing the Benefice of the *Lawe of Nature*, and **ſufficiently Accompanyed** for his Defence, and Recovery of his Right, to the ſeid Coronne, of the ſeid Reame, CAME thereunto, not *then having any Lord therein above him, but God*, and in the **Time** of a Parlement, holden by the ſeid *Henry*, late called King *Henry* the Sixt, *the Sixt Day of* October, *the* xxxix *Yere of* his ſeid Reigne, **Entended** to uſe his Right, and to Entre into the Exerciſe of the Royall Power, Dignitees, and Lordſhip aboveſeid, *as it was leefull*, and according to Law, Reaſon, and Juſtice, hym ſoe to doe; *And thereupon ſhewed, opened, declared, and proved, his Right and Title to the ſeid Coronne, to fore the Lords Spirituell and Temporell, and Comyns*, being in the ſame Parlement, by auntient Matters of ſufficient and notable Record, undefeiſible; *whereunto it could not be anſwered or replied by any Matter*, that of Right *ought to have deferred him*then, from the *Poſſeſſion* thereof; *Yit natheleſſe, for the tender Zele, Love, and Affection*, that the ſame Duc bare of Godly and Bliſſed Vertues, and Natural Diſpoſition to the reſtfull Governance, and Policie of the ſame Reame, and the Comyn Wele thereof, which he loved all his Lyf, deſired, and preferred, before all other Things Erthly, though all the ſaid Lords Spirituell and Temporell, *after long and mature Deliberation by them had, by good Advis upon the ſeid Right and Title*, and the Authorities and Records proving the ſame the Anſwers thereunto given, and the Replications to the ſame made, *knew the ſame Right and Title* true by them, and the

ſeid Comyns ſoe Declared, Accepted, and Admitted, in the ſame Parlement, *it lyked him at the grete Inſtaunce*, Deſire and Requeſt of the ſeid Lordes ſolempnly, and many Tymes unto him made, *to aſſent and graunt unto a Convention, Concord, and Agreement, bitween the ſeid* Henry, *late called King* Henry *the Sixt, on that oon Partie, and him on that other, upon the ſeid Right and Title*, by the ſame late called King, by the Advis and Aſſent of the ſeid Lords Spirituell and Temporell, and Comyns, being in the ſeid Parlement Auctoriſed, in the ſame *comprehending* among other, That the ſeid late King *Henry* the Sixt (*underſtanding certeinly*, the ſeid Title of the ſeid *Richard* Duc of *Yorke, juſt, lawfull*, trewe, and ſuffiſant, *by the Advis and Aſſent of the Lords Spirituelx and Temporelx, and* Comyns, in the ſeid Parlement Aſſembled, and *by Auctoritie* of the ſame) **Declared**, *Approved, Ratified, Confermed*, and *Accepted* the ſeid *Title*, juſt, good, lawfull, and true, and thereunto **gave** his Aſſent and Agreement of his free Will and Libertye; and over that, by the ſeid Advis and *Auctoritie, Declared, Affirmed*, and Reputed the ſeid *Richard* Duc of *Yorke*, verrey true and *rightfull* **Heire** *to the Coronnes, Roial Eſtate*, and Dignitee, of the Reames of *England* and *Fraunce*, and Lordſhip of *Irlond*, aforeſeid; and that, accordinge to the Wurſhip and Reverence thereto belonging, he ſhuld be taken, accepted, and reputed, in Wurſhip and Reverence, *by all the Eſtates and Perſones* of the ſeid Reame of *England* (*the ſeide* late King *Henry* the Sixt, **Saving and Reſerving to himſelf**, the ſeid Coronnes, Reames, Royal Eſtate, Dignity, and Preminence of the ſame, and the ſeid Lordſhip of *Irlond*, *during his Lyf natural*) **And** furthermore, by the ſame Advis and *Auctoritie*, wold *conſented, agreed*, that after his Deceſſe, or when it ſhuld pleaſe him to *Ley from him the ſeid Coronnes*, Eſtate, Dignitee, and Lordſhip, or thereof **Ceſſed**; the ſeid *Richard* Duc of *Yorke*, and his Heires, ſhuld immediately **Succede him** in the ſeid Coronnes, Roiall Eſtate, Dignite, and Lordſhip; and theym **then have** and joye; any Acte of Parliament, Statute, Ordinaunce, or other Thing to the Contrarie made, or Interruption, or **Diſcontinuance** of Poſſeſſion, notwithſtandinge; **And** if eny Perſone or Perſones, from thenſforth, *Ymagined*, or Compaced the Deth of the ſeid *Richard* Duc of *Yorke*, it be demed and juged **High Treſon**, in Manere and Fourme as it is ſpecifyed in the ſeid Acte; **And** that the ſeid Noble Prince *Richard* Duc of *Yorke, by Wey and Conſideration of Recompence* for his abſteyning for a *Tyme, of the Exer-*

ciſe

ciſe of the Royall ſeid Power of the Benigne, and Noble Diſpoſition, that he bare to the ſeid Comyn-wele, and to the Reſt and Tranquility of the ſeid Reame, *ſhuld have* Caſtells, Manors, Londs, and Tenements, to the Yerely Value of X. M. Marks, whereof the Erldome and Cite of *Cheſtre*, was Parcell, Aſſigned to the ſame Duc, by a ſpecial Act made in the ſeid Parlement, the which Erledome and Cite, the ſeid Duc gave, among other, unto our ſeid Sovereign Lord, then being Erle of *Marche*, as Parcell of Mannors, Lordſhips, Lands, and Tenements, of the Yerely Value of III. M. V. C. Marks, which, by Virtue of the ſeid *Convention and Concorde*, and the Acte thereof made, was geven unto him for the Suſtentation of his Eſtate, *abidyng and perſevering like a true Chriſten*, and honurable Prynce, in full Purpoſe, to keep and obſerve the ſeid *Convention and Concorde*, for his Partie; *Truſting* verreily, that the ſeid *Henry*, late called King *Henry* the Sixt, wold have truely, faithfully, and juſtly, keped and obſerved for his Partie, the ſame Convention and Concorde inviolable, as by Lawe, Reaſon, and Pryncely Honour, and Duete, he was bounden to doe, and not have departed and varyed from ſuch Convention, **made by ſoo high, and ſoo great Auctorite, as it was made**, *whereunto, neither our ſeid Sovereign Lord, ne the* ſeid Noble Prynce, aſſented, but without Prejudice of the ſeid Right and Title, as it is pleynly ſpecifyed in the ſeid Acte, made uppon the ſeid *Convention and Concorde*; **and** under Proteſtation and *Condition*, that the ſeid late King *Henry* ſhuld kepe and perfourme, without *Fraude, or Male Ingyne*, all Things therein contained for his ſeid Partie, declared openly by their Mouths, in the Preſens and Heryng of the ſeid Lords, in the ſeid Parlement; **and** therein **Enacted** of Recorde, at the grete Inſtaunce and Prayor of the ſame late King *Henry* the Sixt, **and** at the ſolempne Requeſt of all the ſeid Lords; **For** the tender and ſpeciall Zele, Love, and Affection, that he bare to the Reſte of the ſeid Reame, and to the Comyn Wele and Policie thereof, *toke his Voyage* of good, bliſſed, and vertuous Entent and Diſpoſition, toward *the North Parties of the ſeid Reame*, to Repreſs and Subdue certain Ryotts, Rebellions, Inſurrections, and Comotions, there bigonne; **And the Premiſes**, notwithſtandinge the ſeid *Henry*, late called King *Henry* the Sixt, continuing in his ould Rancour and Malice, uſing the Fraide and Maliciouſe Deſceit and Diſſimulation, agenſt Truth and Conſcience, that accorde not with the Honour of any Chriſten Prynce, to th' Entent, that the ſeyd Agreement, Concorde, and Acte, ſhuld take noo due Effect,

and into the Fruſtration of the ſame, and the Matiers and Thyngs above reherſed (that is to ſay) That neither the ſeid *Richard* Duc ſhuld have, ne Enjoye the ſame Caſtells, Manors, Lands, and Tenements, Name, Title, Reverence, and Wurſhip, above reherſed, neither he, ne his Sonnes and Heirs, ſuccede in the ſeid Corones, Roiall Eſtate, Dignitee, and Lordſhip, after the Tenor, Fourme, and Effect, of the ſeid Agreement, Concorde, and Acte, with all ſubtill Ymaginations, and diſceitfull Weys and Meanes, to him poſſible intended, and covertly laboured, excited, and procured, *the fynal Deſtruction, Murdre, and Deth*, of the ſeid *Richard* Duc, and of his Sonnes (that is to ſay) Of our ſeid nowe Sovereigne Lord King *Edward* the Fourth, then Erle of *Marche*, and of the Noble Lord *Edmund* Erle of *Ruthland*: And for th' Execution of his dampnable and malicious Purpoſe, by Writeing, and other Meſſages, moeved, excited, and ſturred thereunto, the Ducs of *Exceſter* and *Somerſett*, and other Lordes, being then in the North Parties of this Reame; *whereupon, at* Wakefeld, *in the Shire of* Yorke, the ſeid Duc of *Somerſett* falſely, and *traiterouſly*, the ſame Noble Prince Duc of *Yorke*, on *Tuiſday* the xxxth Day of *December* laſt paſſed, horribly, cruelly, and tyrannouſly, Murdred, and alſo the worthy and good Lordes *Edmund* Earl of *Ruthland*, Brother of our ſeid Soveraigne Lord, and *Richard* Erle of *Salusbury*, and not therewith content, of their inſaciable Malice, after that they were dede, made theym *to be heded with* abomynable Cruelte, and horrible Deſpite, agenſt all Humanite and Nature of Nobles; and after that, the ſame *Henry* gretely and wonderfully joying the ſeid dolorouſe and piteouſe *Murdre* of the ſame Noble Prince, and Worthy Lordes, to the ſeid Reame, an hevy, and a lamentable Sorrow and Loſs, forthwith, and often-times after, openly declared to diverſe Lords of the ſame Reame, that he would *not in any wiſe kepe the ſeid Convention and Accorde*, ne the Acte thereof made, and to th' Infraction and Violation of the ſeid Convention and Concorde, not oonly ſent Lettres, made under his Privy Seale, unto certeine Knights and Squires, comanding and chargeing them by the ſame, to ſpoil and diſſeiſe our ſeid Soveraigne Lord, by the Name of Erle of *Marche*, of his Poſſeſſion of the ſeid Erledome and Cittee of *Cheſtre*, whereof he was lawfully Poſſeſſed and Seazed, *by Vertue and Reaſon of the ſeid Convention and Concorde*, but alſo of extreme Violence, *utter and final Breche* of his Partie of the ſeid Conventions and Concorde, ſent out Writts under his Seale, to the Major, Aldermen,

dermen, and Commonaltie of the Citie of *London*, bereing *Date the* xxijd *Day of* Feverere laſt paſt, and other lyke Writts, to dyvers Officers, Governors, and Miniſtres of dyvers other Citees, and to many Shires and Boroughs of the ſeid Reame to make fals, untrue, and injuſt *Proclamations* agenſt our ſeid Soveraigne, and Liege Lord, King *Edward* IV. by the Name of *Edward* late Erle of *Marche*, *to provoke and excite* his Deſtruction: And alſo by his Letters Signed with his Hande, directed unto the ſeid Duces of *Exceſter* and *Somerſet*, and other Lordes, *refuſed and denied* to kepe and obſerve the ſeid *Accorde and Convention, and Agreement*, and by the ſame Writeing *falſing his Promiſe, departed* from the ſeid *Convention and Accorde*, afore either the ſame, our Sovereigne Lord, or the ſeid Noble Prynce his Father, *any Thing did, or attempted to the contrarie of the ſame Convention and Concorde* for their Partie. **Be it declared and juged,** by the ſeid Advis, and Conſent, and Auctoritie, the Premiſſes conſidered, That the ſeid *Henry*, late called *Henry* VI. agenſt good Feith, Trouth, Conſcience, and his Honour, **brake** *the ſaid Convention and Concorde*, and *departed* therefrom, of wilfull Malice, long afore the ſeid *4th Day of* March, as by the Matiers, afore-declared, it apperith ſufficiently; and that the **Breche** thereof on his Partie, *diſcharged* our ſeid Soverayne Lord of all Things that ſhuld or might *charge* him to the kepeing thereof in any Article or Poynt after the ſeid **Breche**, and *that he was then at his Freedome*, and Libertee to uſe his *ſeid Right and Title* of the ſeid Coronnes, and to entre into th' *Exerciſe* thereof, and of the Roiall Power, Dignitye, and Preeminence longing thereunto, as he *lawfully didd* in Manere and Fourme above ſpecifyed, the ſeid *Convention and Concorde*, and the Acte thereupon made, or any Thing therein conteined notwithſtanding: And, over this, it **be** Declared and Juged, by the ſeid Advis, Aſſent and Auctoritie, *That the aboveſeid Agreement, Concorde and Acte*, in all Things, which been in any wiſe repugnant, or contrary to the ſeid Right, Title, Entre, State, Seaſon, and Poſſeſſion of our ſeid Sovereigne Lord King *Edward* IV. in and to the Coronne Royal, Eſtate, Dignite, and Lordſhip aboveſeid, *be void, and of noo Force, ne Effect*, and that it be *Ordained and Stabliſhed* by the ſeid Aſſent, Advis, and Auctoritie, that every Perſon haveyng any Parcell of the ſeid Caſtells, Manors, Lands, Honors, Tenementes, Rentes, Services, Poſſeſſions or Hereditaments aboveſeid, the which were geven in Eſchaunge, or in Recompence of, or for any other Manors, Caſtells, Lands, Tenementes, Rentes, Avouſons, Fee-Farmes,

Farmes, Reverſions, or any other Poſſeſſions or Enheriditaments geven to the ſeid *Henry* late Erle of *Derby*, to the ſaid *Henry* his Son, late called King *Henry* V. or to the ſeid *Henry* his Son, late called King *Henry* VI. or to any other Perſone or Perſones, or to, or for their, or any of their Uſe, or at any of their Deſire, or to perfourme and execute their, or any of their Will, mowe entre, and that they, and their Heires and Succeſſors, entre into the ſame Manors, Caſtles, Lands, Tenementes, Rentes, Services, Poſſeſſions, Advowſons, or Hereditaments ſo geven, and theym have, holde, kepe, joye, occupye and enherite, of like Eſtate as the *Gever or Gevers* thereof, had them at the Tyme of the Gift thereof made, though it be ſoo, that in any of the Lettres Patents or Geſtes made of any of the Premiſſes, noo Mention be made of any Recompenſe or Eſchaunge. *Qua quidem Petitione in Parliamento predicto lecta audita & plenius intellecta de aviſamento & aſſenſu dominorum Spiritualium & Temporalium in eodem Parliamento exiſten' & ad requiſitionem Communitatis predictie reſpondebatur eidem modo & forma hic inferius annotatis.*

The King, by the Advis and Aſſent of the Lords Spirituell and Temporell, in this preſent Parlement Aſſembled, *at the Requeſt of the Comyns*, being in the ſame, *agreeth, and aſſenteth to this Petytion*, and hyt accepteth, **with** certaine Moderations, *Proviſions and Exceptions by his Highnes thereupon made*, and in certayne Cedules written, and in the ſame Parlement Delyvered, the Tenours of which here under followen.

And then follows the Number of Fourſcore Proviſo's, whereby was provided, *That this Act or Declaration, ſhall not extend to hurt, or prejudice the ſeveral Perſons in thoſe Proviſo's named, who claimed by particular Grants from the three* Henry's *of the Houſe of* Lancaſter.

It is Apparent, from the Parliament Roll of theſe Proceedings, That this formal Repreſentation, ſtated in the Commons *Petition*, did not paſs into a Law, or an Acte of Parliament, for two Reaſons; Firſt, *Becauſe when King* Edward IV. *aſſented to the Petition, he Added many Proviſo's and Reſtrictions to ſuch his Conſent*; which is Unparliamentary; Firſt, *Becauſe the King is, by the Conſtitution, Excluded from Making ſuch Additions, Conditions, or Alterations*: Secondly, *Becauſe when*

that

that Quſtion came under Debate in this very King's Parliament, Whether the *Royal Aſſent* Given by the three *Henry's*, to Acts or Statutes paſſed in their Parliaments, did make them Part of the Laws of the Land, or not? It was Reſolved in the Affirmative, as hereafter will be Related: From whence it Appears, *That the three* Lancaſtrian *Kings were* Lawful Kings, *and that the Right of King* Edward IV. *was grounded on the ſaid Parliamentary Contract, or Settlement of the* Succeſſion; *without which, he had not ſucceeded to the Government*: The Concluſion is therefore ſtrong, *That this King's Title, was founded, not, on an* Hereditary, *but, on a Parliamentary* Right.

The ſingular Inſtance of a Breach of this Conſtitution, that was made in the Firſt Year of King *Henry* VIIth's Reign, merits at this Period, a particular Advertiſement; the Manner was thus; *King* Richard III. *had procured an Act to paſs in his Parliament, whereby King* Henry VII. *when Earl of* Richmond, *of the Houſe of* Lancaſter, *for Attempting, with Forces to invade* England, *was Attainted of High Treaſon*; but when that Earl was placed in the Throne, by the Name of King *Henry* VII. his Judges Declared, that *That Act, or Statute of Attainder, was, by his Acceſſion to the Crown, become null and void, without needing any Repeal thereof, by Parliament*: Which was the Exerciſe of a Power, from which might be inferred dangerous Conſequences; for whenever a King hath as ſtrong a Sword in his Hand, and the People happen to be in a Frenzy, and as much at his Devotion, the making and Declaring Laws, will be of equal Facility, although not with Juſtice or Legality, equal to that Facility. Clarendon, Vol. I. 430.

The Logick of this Power, over Acts of Parliament, may poſſibly be carry'd, and hath actually been carry'd, to Affect other Caſes, and hath been pretended to, to make other Acts of Parliament precarious, and the Form of Government alterable; although this Conſtitution, hath ſo carefully and warily fenced out, and excluded, all ſuch aſſumed Powers and Authorities; and therefore this Opinion of the Judges, made a Precedent, that ought never to be followed, and yet it was afterwards Imitated, in the Caſes of the Ship-Money, and of the Diſpenſing Power; which produced violent Convulſions.

BREACHES IN THE REIGN OF KING CHARLES I.

CHAP. IX.

SECT. I.

THE Memory of King *Charles* I. is treated equally, if not ſuperior, to the moſt celebrated Martyrs; but yet it muſt be remembred, That there were, in his Time, greater Convulſions, Wars and Bloodſhed, than, ſince the Foundation of this Government, ever happened; and that his Exerciſe of the Regal Power, over Parliaments, in Relation to the Aſſembling, Proroguing and Diſſolving of them, was the Cauſe of all the Diſagreements, Differences and Contentions between his Majeſty, and his People, that happened in his Reign.

The

The Controverſies between this King and his People, touching the Rights and Powers of the Regal Dignity, and the Rights and Powers of his Parliaments, were ſo numerous, and ſo material, that without Stating them, this whole Undertaking would appear Defective; and therefore the Writer, to the End he might be ſure, of Repreſenting the **Portraiture** fairly, hath choſen to extract the whole *Relation*, from thoſe Hiſtorians, who have, in this King's Favour, conveyed to us, the trueſt Memorials of his Adminiſtration; namely, the Earl of *Clarendon*, Mr. *William Sanderſon*, Sir *Richard Baker*, Mr. Arch-Deacon *Eachard*, and Father *D'Orleans* the Jeſuit, as he hath been Tranſlated, and Recommended, by Mr. *Eachard*; and *Huſband*'s Collections of Paſſages, between his Majeſty and his Parliament, Printed in the Year 1661. *Hammond L'Eſtrange*, Eſquire, *&c.*

The Contentions between this King and his People, touching his Regal Power, and Prerogatives, and the Rights and Hereditary Privileges of the two Eſtates of Lords and Commons, both in, and out of Parliament, were to this Effect; The Courtiers revived the *Principle*, which, at the Origination of this Conſtitution and **Form** of Government was, by ſome propoſed and contended for, (*viz.* That the King was, or ought to be a MONARCH, Arguing, *That the Regal Dignity was* Supreme and Sovereign; *That he, as King, was ſelf-ſufficient to* Govern, *without permitting Parliaments, or the* Two Eſtates *of Lords and Commons, to intermeddle*; *That the King, being the Sovereign, all Laws received their Life and Being from him only, and that no Law could have more Force, than it received from its* **Maker**,; *That the King's* Power *muſt therefore neceſſarily, be above the Laws of his own* Making, *as the* Maker *is above the Thing* made; *That though many Things are directed by the Laws of the Land, yet the King, as Sovereign, might, in ſome Caſes, act by the* Supreme Law *of his Government, without Regard to Ordinary Rules*; *That* Parliaments *were in their Nature,* but *Subordinate Eſtates, no greater than Counſellors, to be called or not called*; *and if called, their Advice might be uſed, or not uſed, at the Sovereign's* Abſolute Will and Pleaſure.

And, accordingly, the Government, during the firſt Fifteen Years of this King's Reign, was Adminiſtred in Effect, *without Par-*

Parliaments; For though four Seſſions were held, in his firſt four Years, yet the ſame were untimely broken and diſperſed, and their Endeavours, to Reform ſuch Errors as grieved the Nation, render'd fruitleſs and ineffectual, and ſome of the Members, in their Way Home, had Characters ſent after them.

The Lords and Commons, on their Part, contended and claimed, *That as* Two *of the Three Eſtates of the Kingdom, they had a Right, by Virtue of the Original Conſtitution, to be* **frequently** *called and aſſembled in Parliament, and when aſſembled, had a Right to ſit, and adviſe, and make ſuch* Inquiſitions *for Redreſs of Grievances, and ſuch Proviſions for good Government, and the Peace and* **Defence** *of the People and Nation* (whom they Repreſented) *as would anſwer the End of their* **Ordination.**

They *admitted, That the Conſtitution did* Intruſt *the King with the executive Power, of the Laws and Government, and with the Supreme Prerogative of Aſſembling, Proroguing, and Diſſolving Parliaments; but with this Limitation, That Parliaments ſhould be aſſembled* **frequently.**

And they inſiſted, *That ſuch* Aſſembling *of them, was a Debt due in Juſtice to the Nation; and that a Neglect or Denial to aſſemble and hold Parliaments, would render the* Two Eſtates *uſeleſs and inſignificant, as if they had no Rights and Privileges, to be taken from them*; whereas the Lords and Commons inſiſted, *That the Rights and Powers of Parliaments, were the Birth-Right, and Hereditary Privileges, not only of themſelves, but of the whole People, wherein every individual Perſon was Intereſted.*

SECT. II.

THESE were the firſt Controverſies in general, that aroſe between his Majeſty and his People: **Material** they were, becauſe the *Eſſence* of the Conſtitution, and Original Form of Government, was the **Stake** contended for.

But to narrow theſe general Poſitions, it is Remarkable, That King *Charles* was 25 Years old, when he *Acceded* to the Government, and that it is written of him, *That he was Learned,* and

and that his Majeſty himſelf had been pleaſed to ſay, *That he knew as much of the Laws, as moſt Gentlemen in* England: But then it muſt be obſerved, That his Miniſters, in whoſe Counſel he confided, had taken a large Draught of Notions, appertaining to the Civil Law, and to abſolute Monarchy, and to the Sovereign Prerogatives, either of the *French*, or the *Eaſtern* Crowns; of which laſt, Plenty was found in the Scripture, and in the Writings of Doctors, dead and living, who diſdaining the *Britiſh Laws*, admired only the Civil Law Maxims; And this King's Right being Hereditary, and without Competitor, his Miniſters imagined, he might Govern as a Monarch, with the like Abſolute Prerogatives, as thoſe Eaſtern, or Civil Law Potentates; And that the People, however treated, were bound, in Duty, to admire his ſublime Dignity, to bear and ſuffer all his Preſſures, although Illegal, and, at the ſame Time, to Love and Support him.

A ſhort Repertory in this Place, of theſe Cardinal Maxims of the Civil Law, which are contradictory to, and diametrically inconſiſtent with, the Conſtitution and Laws of *Britain*, will Illuſtrate the future Proceedings of this King's Miniſters.

The Civil Laws which prevail in all the Kingdoms of *Europe* (except *Britain*) and are therefore advanced in Glory, above all Human Laws, give the King an Abſolute Dominion; they give him Power to make and change the Laws; they make his Pleaſure the Law, *Quod principi placuit Legis habet Vigorem.*

They give the King the ſole Power of Impoſing Taxes on the People without their Conſent.

They give the King the ſupreme Judicature, in his own Perſon, of all Controverſies, Civil and Criminal, and Power to pronounce Judgments with his own Mouth; to Impriſon, and to execute Puniſhments at his Pleaſure, without Appeal.

And, therefore, by Colour of theſe Laws, where they preſide, when a Gentleman, or Nobleman, is accuſed of a Crime, he is not to be conven'd before ordinary Judges, but is talked with in the King's Chamber, or in ſome other private Place; and if the King judgeth him Guilty, he is, without any Form of Judgment, and without being heard, to defend himſelf, put

into a Sack, and, in the Night-time, privately hurled into the River and drowned.

The King's Miniſters being great Proficients in the Civil Law, became immeaſurably addicted to a ſole Monarchical Sort of Government, and could not bear with the Common Laws, or with the Rules of Government in *England*, or with any Counſels that pointed at any Reſtrictions, eſteeming the Acts of his Majeſty's Government, to be above all Controul, and not Inquirable into, nor to be Controverted.

This Fever of the Mind, in the King's Miniſters, became Incurable; for the Diſtemper could never be (either by Diſappointments, or by being Vanquiſhed in Battle, or otherwiſe) Cured or Removed.

SECT. III.

THE Acts which, in the firſt Fifteen Years of his Majeſty's Government, diſcontented the People, were Numerous; but to remember ſome of them, may, for the Purpoſe in Hand, be ſufficient.

The Unhappineſſes which this Reign fell under, were the firſt, and early, Contentions and Controverſies, between his Majeſty, and the *Houſe of Commons*, touching the moſt *eſſential* Parts of the Conſtitution, following, *viz.*

I. *Touching the* **Power** *and Authority of Impoſing Taxes, and Levying Monies, upon the People, and therein, whether the King had a Right or Power, to* Impoſe *and Levy the Cuſtoms of Tonnage and Poundage, or to Impoſe* Duties on Wines, *and other Merchandizes Imported, without a previous Grant thereof in Parliament.*

This Power the King aſſumed, and challenged as a Right, under the Name of his undoubted Prerogative, and graſped the Pretence ſo hard, as never to part with it, 'till he wanted Strength to hold it.

The Commons, on their Part, aſſerted the Fundamental Form of this Government, and denied this Legiſlative Power, and never **ceaſed** Struggling, 'till they had Aſſerted and Vindicated

cated the Conſtitution, and their own Original Right, and Sole Power of giving or denying Money, and impoſing Taxes by Grants thereof in Parliament.

II. *Touching Parliamentary Proceedings; whether the Commons were obliged to obſerve and obey the King's Meſſages and Directions, in giving* Precedency *to the Matter of Supplies, preferable to the Redreſs of Grievances, and to depend on his Royal Promiſes, for Time and Opportunity to* diſpatch *their other Buſineſs; or whether the Commons might proceed at their own Diſcretion, and to give* Precedence, *to their Inquiſitions and* Redreſs *of Grievances, and* Poſtpone *Supplies, which imply'd a* Power *to deny Supplies, unleſs their Grievances were firſt Redreſſed.*

His Majeſty inſiſted, *That the Commons ought, to obſerve his Directions, in giving* Precedence *to the Supplies he required,* as if that were the main End and Buſineſs, for which Parliaments were Ordained and Aſſembled; and the rather, ſince he had the *Sole Power* of their Aſſembling, Sitting, and Diſſolution.

The Commons, on their Part, denied any Power to manage them after this Manner, and Aſſerted their own Rights and Privileges, to proceed in giving *Precedence*, either to Supplies or Grievances, as they judged moſt convenient.

III. *Touching the Commons* Right *and Power, of Inquiring into the Demeanor of the King's Miniſters and neareſt Servants, and* Impeaching *them for Miſdemeanors.*

This was denied on one Side, and challenged by the other, in the Manner before expreſſed.

IV. *Whether the Members of Parliament, ſhould enjoy that Liberty of* Speech, *which they eſteemed to be the Foundation of all their Privileges; or whether the King could, in his Courts below, take Cognizance of, and cenſure their Debates in Parliament.*

V. *Whether the King could, by Warrants Signed with his own Hand, Arreſt and Impriſon his Subjects, and eſpecially the Members of Parliament, for what they ſaid and did in Parliament.*

SECT.

SECT. IV.

THE Particulars of theſe Contentions, appear from the Matters of Fact following, *viz.*

In the firſt Parliament of this Reign, which was opened on the 18th of *June*, 1625, his Majeſty (with great Reaſon) to Support his Government, demanded a Supply of Money, which, in Reality, was much wanted: The Commons, at firſt, gave a ſmall Supply, and were ready to grant more; but they, with as great Reaſon, made Complaints, inſiſting, before any Grant of further Supplies, to proceed in **Redreſſing** their Grievances, which were;

I. *That his Majeſty had Exacted and Levied the Cuſtoms, called* Tonnage *and* Poundage, *without a new Grant thereof in Parliament; and had continued to exact certain Duties upon Wines, which his Father the late King, by Pretence of his Prerogative Royal, had* Impoſed.

II. *That the exorbitant* **Power** *of the Duke of* Buckingham, *into whoſe Hands this King, as well as his Father, had, in a manner, Delegated the Government, had, for a long Time, grieved the Nation, becauſe from him* (as they imagined) *came all the* Oppreſſions.

The King being diſpleaſed with theſe Proceedings, did, at the End of Twenty-three Days, Adjourn this firſt Seſſion, of his firſt Parliament, from *Weſtminſter*, to meet him the firſt of *Auguſt* at *Oxford*.

SECT. V.

PENDING this ſhort Receſs, the Miniſters adviſed the King to Exerciſe (and his Majeſty did Exerciſe) ſuch a **Power**, Echard 422. as proved, they imagined his Majeſty's Authority was above all Inquiſitions, whether the ſame were engaged in any Intereſt, **Contrary** to that of his People, or *contrary* to that of the Proteſtant Religion; for his Majeſty gave expreſs and ſtrict *Orders*, Signed with his own Hand, to Captain *John Pennington*, to deliver (and he did, in Obedience thereto, deliver) up a Squadron

Squadron of the *Naval Forces* of *England*, conſiſting of Eight Men of War, into the Hands and Abſolute **Power** of the *French* King, and directed, *That in caſe of Diſobedience in the* Engliſh *Captains to that Order*, Pennington *was to ſink them.*

Theſe Naval Forces enabled the *Gauliſh* King to *Break* and Suppreſs the Power of the *Rochell* Proteſtants: However, it was found, That one faithful *Briton* (Sir *Ferdinando Gorges*) deſpiſed the Orders, and ſtoutly (in Defiance of the obſequious *Pennington*) brought off his Ship, the *Neptune*, from under the *French* Power, and returned to *England*; but how he afterwards fared, is not remembred; but *Pennington* was, for his Obedience, rewarded with the Dignity of Knighthood, and greatly advanced in the Navy.

SECT. VI.

WHEN the Parliament met at *Oxford*, the Commons proceeded again in their Inquiſition for *Grievances*, Antecedent to their Granting Supplies; for which Reaſon, the King, at the End of Ten Days, ſuddenly, and with great Diſpleaſure, **Diſſolved** this his Firſt Parliament.

The Second Parliament was opened on the 6th of *February*, 1625, but the Commons proceeding again upon Grievances, and one of their Members (Mr. *Coke*, Son of the late Chief Juſtice) having ſaid in the Houſe, *That it was better to die* Echard 426. *by an Enemy, than to ſuffer at Home*; and another Member (Doctor *Turner*) having propoſed Queries in the Houſe, which inferred the Duke of *Buckingham*, to be a Grand *Malefactor*, and a Reſolution being taken to **Impeach** him upon Common Fame, his Majeſty reſented that Behaviour, of the Houſe of Commons, and preſſed for Supplies, declaring to them, *That* Echard 426. *he would accept* **no leſs** *than what were proportionable to the Greatneſs of his Occaſions, and propoſed to know, without further Delay of Time, what Supply they would give him*; adding, *That he would Hear and* Redreſs *their Grievances, if preſented in a* **Manerly** *Way, but would not allow any of his Servants to be* Queſtioned *by them*; *and deſired them to haſten for his Supply, or elſe it would be* **Worſe for them.**

This Treatment made the Commons more **Reſolute**; upon which, the King ſent to the Houſe a Meſſage, Intimating, *That he took their Proceedings againſt the Duke of* Buckingham, *to be, in Reality, againſt the Honour, and reflecting on the Go-*
Echard 426. *vernment, both of himſelf, and his Father; That he could not ſuffer an* Inquiry *on the meaneſt of his Servants, much leſs on one ſo near him; That he wondred at the Impudence of any Man, that could think, he ſhould be drawn to offer ſuch a Sacrifice, unworthy of his Royal Greatneſs, and the Maſter of ſuch a Servant* (meaning the Duke); *and deſired the Juſtice of the Houſe againſt the Delinquents, that he might not be conſtrained* **to uſe his Royal Authority in Righting** *himſelf againſt thoſe two Perſons* (meaning the two Members above named.)

Echard 427. Soon after, his Majeſty declared to this Parliament, *That Parliaments were altogether in his* **Power**, *for their Calling, Sitting, and Diſſolution; and that, therefore, as he found of them, Good, or Evil, they were to Continue, or not to* **Be**: He bid them remember, *That if now, inſtead of mending, they per-*
Echard 427. *ſiſted in their* Errors, *they would make thoſe Errors Irreconcileable; but if they would go on chearfully, to mend them, they would encourage his Majeſty* **to go on** *with Parliaments.* Which laſt Expreſſion, was apprehended to carry in it two Inuendoes; 1. *That if they mended not, he would Govern without Parliaments*: 2. *That the Regal Power was the Creator, and could give, or deny, a* **Being** *to Parliaments.*

The Lords, at this Parliament, were not without their Grievances; for that Writs of Summons, were not ſent to ſome of the Peers, and when the Writs were, with Importunity, obtained,
Sanderſ. 30. Echard 427. the ſame were attended, with expreſs Orders to thoſe Peers, *Not to appear in Perſon*; and for that, the King, during the Sitting of this Parliament, Committed, and Continued a Priſoner, in the *Tower*, one of the Peers, the Earl of *Arundell.*

The Commons, notwithſtanding theſe Menaces, proceeded according to their own Meaſures, *Impeached* the Duke of *Buckingham* for High Crimes and Miſdemeanors, one of which was, for giving the Plaiſters and Potions to the late King *James*, in his laſt Sickneſs; to which *Impeachment*, the Duke put in his Anſwer: The Commons Addreſſed the King, with a Remonſtrance againſt the Duke's continuing in the Adminiſtration;

upon

upon the Reading whereof, the King told the Commons, *That no wiſe Man could juſtify it*: And thereupon his Majeſty went to the Houſe of Peers, and there publickly gave his Hand to the Impeached Duke of *Buckingham*, to *Kiſs*, as it were, in *Defiance*; and then Diſſolved this, his Second Parliament, and carried the Duke away with him in his Coach, and ſent after the Parliament a Proclamation, Declaring the Cauſes for his ſo doing: Which Appeal to the People, endeavouring to diſparage ſome of their Repreſentatives, produced Effects quite contrary. Echard 429.

SECT. VII.

IT is too material to be forgotten, that pending the Tranſactions about this Impeachment, the King exerciſed a Magiſterial Act of Power; (to wit) two Members, Sir *Dudley Diggs* (by whom the Articles of Impeachment, were Reported and Read) and Sir *John Elliot* (by whom the Crimes were, in a pathetical Speech, aggravated) were beckon'd out of the Houſe, as if ſome Gentlemen wanted to ſpeak with them; but when they came into the Lobby, two Meſſengers, of his Majeſty's Chamber, by Virtue of a Warrant Signed by the King himſelf, arreſted them in the Lobby, for what they had ſpoken in the Houſe, relating to that Impeachment, and carried them Priſoners to the Tower; where they lay after the Diſſolution, until the Judges (being required) certified their Opinion, *That this Arreſt and Reſtraint (without giving any Reaſon to the Houſe) was an Arreſt of the whole Body of that Houſe*; whereupon his Majeſty Releaſed them; but it is not Remembred, That any Satisfaction, was ever given, either to them, or to the Houſe of Commons, for this Provoking Violation of Parliamentary Rights, or for the Injurious Impriſonment. Sanderſ. 45.

In this Second Parliament, there was a Mention and Intention Declared, of granting five Subſidies, a Proportion ſcarce ever, before that Time, heard of in Parliament; and although that Parliament was, upon unpopular and unplauſible Reaſons, immediately Diſſolved, yet the King cauſed thoſe five Subſidies to be exacted, and levied upon the People, with the ſame Rigour and Imperious Power, as if, in Truth, an Act had paſſed for granting them; for divers Gentlemen, of Prime Quality, in ſeveral Counties of *England*, were, for refuſing to pay the ſame, committed to Priſon, with great Rigour, and extraordinary Circumſtances. Clarendon Vol. I. 5.

SECT.

SECT. VIII.

THE Intermiſſion between the Diſſolution of this ſecond Parliament and the Meeting of the Third, continued one Year and nine Months, during which Time, his Majeſty Exerciſed a Legiſlative Authority, or Arbitrary Power, then called his Royal Prerogative, and levied on the People 200,000 *l.* by Letters, requiring all Men to lend him Money, according to the Rates they were aſſeſſed at, in the laſt Subſidy: The Cauſes, and Grounds of this Commiſſion, to require the Loans, deſerve to be obſerved, *viz. That the King and his Allies were in Danger*; *That the Parts beyond Sea, where our Cloth was Vended, and from whence came our Naval Stores, were in Danger*; *That although a Parliament had been Aſſembled, yet no Supply had been Granted*; *That his Majeſty's Neceſſities had multiplied his Enemies*; *That the Kingdom was threatened with mighty Preparations abroad, both by Sea and Land*; *That the very Subſiſtence of the King and People, was in apparent Danger of irreparable Sufferings, unleſs, not only a ſpeedy, but ſuch a preſent Stop were made, as could not admit of a Delay to Aſſemble a Parliament*: The Commiſſion expreſſed only the *Lending of Moneys*, but the Inſtructions that accompanied it, were compulſory, *to Impriſon and bind over to the Board (or Council-Table) ſuch as refuſed.* This Commiſſion, and Inſtructions amazed the People, becauſe the Cauſes and Grounds, for requiring this Loan, were thoſe very Matters which, by this Conſtitution, are, and ought to be, the Cauſes for Aſſembling, and Adviſing with Parliaments; and the Defence of the Nation ought not to have been engaged in, or undertaken, without their Advice and Aſſiſtance.

Echard 431. Baker 441. However, in Execution of this Commiſſion, and of thoſe Inſtructions, many of the great Commoners, all over the Nation were, for refuſing to lend, impriſoned; not only with provoking Circumſtances, but with this Arbitrary Ingredient, That they were Denied the Benefit of their *Habeas Corpus*, notwithſtanding the Warrants for their Commitment, ſpecified no Cauſe for their Impriſonment.

SECT.

SECT. IX.

AND during this Interval of Parliament, Doctor *Mainwaring*, the King's Chaplain, preached before his Majesty, two Sermons, in which he asserted the most Arbitrary Positions, that were ever published; (to wit) *That the King had a Right, in case of Danger, to impose Taxes, and levy Money upon his Subjects; and that he was the sole Judge of the Danger; That the Authority of Parliament was not necessary, in such Cases; That the King might punish the Disobedient, who should refuse to pay what Monies he required; and that the Property of all Goods was in the Subject in Ordinaries, but in the King in Extraordinaries.*

If the Doctor had proceeeded, and said of the King, *That his Power was such, That whom he would, he might Kill; and whom he would, he might keep Alive; and whom he would, he might make Rich; and whom he would he might make Poor*; which were but necessary Consequences; his Doctrine had been Uniform, and the **Portraiture** of Arbitrary Power, Honestly Represented.

The Doctor was for these Positions, so Asserted and Published, *Impeached* in the Parliament of 3 *Caroli*, and condemned; 1. *To pay a Fine of* 1000 l. *to the King*; 2. *To deliver a Paper on his Knees, at the Bar of each House of Parliament, signed by him, acknowledging the Enormity of his Offence* (which was by him performed); 3. *To be for ever* Disabled *to preach at Court*; 4. *To be for ever* **Disabled** *to have any Ecclesiastical Dignity*: By which Judgment, the Doctor's Positions and Principles were, by the Highest Judicature, branded as Arbitrary and Illegal.

And yet, upon the Rising of this Parliament, which was precipitately Dissolved, the King, by Letters Patents, under the Great Seal of *England*, **pardoned** the Doctor, and remitted all his Punishments, *Enriched* him with great Benefices, and after that, *Raised* him to be Bishop of St. *David*'s.

How this Part of his Majeſty's Adminiſtration, may be underſtood, with Decency, and without Prejudice to his Government, is difficult to be found; for all indifferent Perſons will conclude, That the Doctor was his Majeſty's Agent, and did, by his Miniſters private Intimation, publiſh to the People, theſe Poſitions, as the Manner of the King's Government; and that the Doctor's Sufferings in the Cauſe of his Majeſty's Exerciſe of Arbitrary Power, were, by theſe ſudden and extraordinary Rewards, to be compenſated, and others encouraged, to imitate his Example: For theſe Diſtinguiſhing Royal Favours, carry'd in them a Contempt of the Lords and Commons, a Saltation over their Rights and Privileges, and a publick Adhering to, and Maintaining the Doctor's Principles.

The Doctor continued Biſhop of St. *David*'s about 12 Years, and until the Meeting and ſhort Sitting, of the Parliament, held in *April* 1640. in which an Inquiſition for the Injury done, by this Aſſumption to **pardon**, was commenced; but Biſhop *Mainwaring* dying before the Determination, and other Affairs intervening, the Matter dropt *ſub ſilencio*.

SECT. X.

HERE may be ſeen an Inſtance, of thoſe *Crimina Leſæ Libertatis*, or otherwiſe, *Crimina Leſæ Conſtitutionis* (from the Power of *Pardoning* which, the Crown was excluded); for the Doctor's Poſitions, tended to the General Oppreſſion, and to the Stripping the People, of their Rights, Liberties, and Properties, by appropriating to the Crown, the whole Abſolute or Law-giving Power, and rendering the two Eſtates of Lords and Commons, of no Signification: If the King therefore, was intereſted, and probably influenced the Doctor, to commit the Offence, and if the ſame Perſon, being Judge and Party, for whoſe Profit, and by whoſe Encouragement, the Offence was committed, ſhould have Power to pardon the Offence itſelf; ſuch a Power would be inconſiſtent with this Conſtitution, and with the Reaſons, upon which it is founded.

SECT.

SECT. XI.

HIS Majeſty's Affairs deſcending into Circumſtances, worſe and worſe, **Neceſſity** engaged him to call a Third Parliament; in order to which, he thought fit to diſcharge the Gentlemen Impriſoned for denying the Loan; but the Injuſtice and Illegality of that Method of Levying Money, recommended to the People, as the beſt Patriots, thoſe Sufferers; and accordingly, many of them were choſen Members for the next Parliament.

But it is to be remembred, the Hiſtories inform us, *That at the Time when the Reſolution to call a Third Parliament was taken, Care was alſo taken, not only to bring* 1000 German *Horſe into* England, *and to remit* 30,000 l. *for that Purpoſe; but the Project of Impoſing and Raiſing the Tax of Ship-Money, by Regal Authority, without a Grant thereof in Parliament, was then under the Privy Council's Conſideration, in order to Govern without Parliaments, if this intended Parliament ſhould* Poſtpone *the Grant of Supplies, to the Redreſs of Grievances.* Echard 434. Sanderſ. 198.

SECT. XII.

THE Third Parliament was opened on the 17th of *March*, 1627, At which, his Majeſty, from the Throne, told them, *That the Common Danger from Abroad, was the Cauſe of Calling this Parliament, and Supplies, the* **chief End of it**; *and that if they failed in their Duty, he muſt uſe thoſe other* **Means**, *which God had given him, to Save what they would Hazard to Loſe; and that he would gladly forgive what was paſt, ſo as they would leave their* former Ways; *and yet he now condeſcended, that they ſhould proceed on the Supplies, and Grievances* Pari Paſſu.

This Parliament, with great Modeſty, complied, and gave the King, the greateſt Gift, that had ever been given in Parliament; (to wit) *Five Subſidies; Depending on the King's Promiſe, for Time to Redreſs their Grievances.*

The Lords and Commons of this Parliament, behaved modeſtly, and ſhewed no other Reſentment, nor attempted no greater

greater **Redress**, than a soft and temperate Bill, called, *A Petition of Right, to be passed into an Act of Parliament*; by which they hoped, to secure their Liberties and Properties.

This Bill recited *Magna Charta*, and other Acts, in which were contained, Declarations only, of several Parts of the Original Constitution, *viz.*

The Statute of 34 *E.* I. *De Tallagio non Concedendo*, whereby it was Enacted and Declared, *That no Aid should be Imposed or Levied by the King, without Act of Parliament.*

The Statute of 25 *E.* III. which Declared, *That no Person should be compelled, to make any* Loans *to the King, or his Successors.*

That by other Laws, it was provided, *That no Person should be charged with any Imposition called a Benevolence, or with any such Charge.*

The Statute called *Magna Charta*, which declared, *That no Freeman should be Imprisoned, Disseized of his Freehold or Liberties, or Exiled, or Destroyed, but by the Judgment of his Peers, or by the Law of the Land.*

The Statute of 28 *E.* III. which declared, *That no Man should be put out of his Land, or Imprisoned, or put to Death, without being brought to answer by due Course of Law.*

The Statute of 25 *E.* III. which declared, *That no Man shall be Fore-judged of Life or Limb, or Judged to Death, but by the Laws and Customs, or Acts of Parliament.*

Then the Bill represented the Violations and **Breaches** of those Laws, which had been Acted and Committed, by the *Command* and Direction of his *Majesty*, and those *Commissioned* by him, *viz.*

The People being Summoned and Assembled, had been required to **Lend** *his Majesty Monies, and for Refusal, had Oaths tendered to them; and some had been bound over to appear before the Privy Council, and others* **Imprisoned**; *some had been Imprisoned, without other Cause, than his Majesty's* special Command,

mand, ſignified *by the Lords of his Privy Council*; *and for that Reaſon, had, upon their ſuing out their Writs of* Habeas Corpus, *been* denied *to be* Bailed, *and yet were not charged with any Offence*; *to which they might make Anſwer.*

That great Numbers of Soldiers and Mariners, had been Billeted *upon the People, to their Vexation.*

That divers Perſons had been put to Death, by the Martial Law, *when they ought to be Tryed, by the Law of the Land*; *and divers* Offenders *had eſcaped the Puniſhment due, by the Laws of the Land, upon Pretence*, That they ought to be *Tryed*, by the Martial Law, by Commiſſions Iſſued out, by his Majeſty, that were Illegal.

By the Bill, therefore, were prayed theſe moderate Redreſſes.

That no Man ſhould be compelled to make, or yield any Loan, Benevolence, or other Tax, *without Act of Parliament.*

That no Man, for Refuſal thereof, ſhould be called to anſwer, or to take Oath, or give Attendance, or be Confined, or Moleſted.

That no Man ſhould be Impriſoned, *or Detained, in any ſuch Manner as aforeſaid.*

That the People ſhould not, for the future, be burthened with Soldiers, *or Mariners.*

That no Commiſſions for proceeding, by Martial Law, *ſhould Iſſue, or be Executed.*

That the King would declare his Will and Pleaſure, That all his Officers and Miniſters ſhould ſerve him, according to the Laws and Statutes of the Realm.

During this Time, that the Bill, called *The Petition of Right*, depended in Parliament, the King ſpared no Pains, to procure ſomething to be Inſerted, that might make it ſignify nothing, *viz.* That this Clauſe might be Inſerted, *That the Lords and Commons did preſent that Petition to his Majeſty, not only with*

a Care of preſerving their own Liberties, but with a due Regard to leave Intire the **Sovereign Power**, *wherewith his Majeſty was* **Truſted**, *for the Protection, Safety, and Happineſs of his People.*

But that Clauſe was rejected, for its Inconſiſtency and Repugnancy, becauſe it would have this Senſe, That whereas the Petition of Right ſays, *That no* Tax *can be* **Impoſed**, *but by a Grant thereof in Parliament*, it might be admitted to be true, That it could not be done by the King's ordinary Power; but it might be done by that *Sovereign Power*, wherewith the Law had *Intruſted* the King, for the Protection, Safety, and Happineſs of his People.

And ſo, in like manner, it might be ſaid of *Impriſonment*, *Martial Law*, &c. and, conſequently, the Petition of Right would be *Felo de ſe*, and Deſtructive of itſelf, and would leave the People in a worſe Condition, than it found them.

And theſe Overtures being diſliked, the Commons, upon Debate of them, Voted and Declared, *That* **Sovereign Power** *was no Parliamentary Word, and that there could be no ſuch Thing diſtinct from the Power of the Law, or a Legal Prerogative.*

The King, when he came to give the Royal Aſſent, Delivered the ſame thus.

The King Willeth, *That Right be done, according to the Laws and Cuſtoms of the Realm, and that the Statutes be put in Execution: That no Complaint might be made, for Wrong or Oppreſſion, contrary to his Subjects juſt Rights or Liberties; To the Preſervation whereof, he held himſelf obliged, as well in Conſcience, as by his Prerogative.*

This Anſwer was Deemed, not to Expreſs the Royal Aſſent; and therefore, the King was pleaſed to come again to the Parliament, and cauſed theſe Words to be pronounced, as an Anſwer to the Bill, *Soit Droit comme il eſt Deſire*, i. e. *Let Right be done, as is deſired.*

The

The Commons Apprehending this Anſwer, to be the giving the Royal Aſſent, as to an Act of Parliament, Teſtified their Joy by a **Mighty Shout**; and it might have ſo paſſed, if his Majeſty had not *Circumciſed* their Apprehenſion, by Declaring from the Throne, *That his true Meaning was, no more than what he had before Granted by his Firſt Anſwer*; for that he well knew, they **could not hurt** his Prerogative.

In ſome ſhort Time after the Paſſing of this Act, called the *Petition of Right*, his Majeſty was pleaſed, by a Meſſage, to let the Commons know his **Sovereign** Power over them, Intimating, *That he had given them Notice of a Day, when he would put an End to that Seſſion; and therefore he required them not to enter into any New Buſineſs of Length, which might ſpend more than the Time Limited, or which might lay any Scandal or Aſperſion upon the* State, *or* Government, *or the Miniſters thereof.*

This Meſſage Served only to put the Houſe of Commons into a greater Ferment.

For this Meſſage, together with his Majeſty's Declaration, at the Paſſing of the Petition of Right, Revived the Commons Diſtruſts, *That all they had been doing, without doing more, would avail nothing*: They therefore proceeded to prepare a *Remonſtrance* of their Grievances; and alſo a Bill for granting to the King, the *Tonnage and Poundage*; In which they Declared, *That there ought to be no Impoſition, laid upon the Goods of Merchants, but by Act of Parliament; and that the Exacting of* Tonnage and Poundage, *and other Impoſitions, not granted in Parliament, was illegal.*

The King, to obſtruct theſe Proceedings, made a Speech in Parliament, to this Effect; *I underſtand, that a Remonſtrance is preparing, to take away my Revenue of Tonnage and Poundage, one of the chief Maintenances of the Crown, by alledging, I have given away my Right to It, by my Anſwer to your Petition; Now ſince the Houſe of Commons begins to make a falſe Conſtruction, of what I granted, I will declare the true Intent of it: It muſt be Conceived, I granted no New, but only Confirmed Antient Liberties*: But for Tonnage and Poundage, *It is a* Sanderſ. 130.

Thing

Thing I cannot want: It is my own, and was never meant by me to grant: I Command you all therefore, to take Notice, of my true Intent and Meaning, in Granting your Petition.

Echard 438. But his Majeſty was pleaſed to take the Money, by paſſing the Bills for granting the five Subſidies, and then cauſed this Parliament to be prorogued, *Leaving* his own Wants, not half ſupply'd, and his People, almoſt to a Defection, Diſcontented.

SECT. XIII.

DURING the Interval between this Prorogation, and the Beginning of the ſecond Seſſion of this Third Parliament, which continued about Seven Months, the Great Duke of *Buckingham* was, by a Military Officer, whom he had diſobliged, Aſſaſſinated: This ſurprizing Alteration happened at the End of 3 Years and five Months, after his Majeſty's Acceſſion to the Crown, *viz.* in *Auguſt* 1628.

The Duke's Death cauſed a total Change of Counſels and Miniſters; the Jeſuit, Father *D'Orleans*, in his Hiſtory of the Revolutions in *England*, under the Family of the *Stuarts*, Tranſlated, and Publiſhed, and Recommended by Mr. *Echard*, Writes, *That Hiſtory being a Court, where all Mankind has a Right to expect Juſtice, he muſt, for that Reaſon, do the Queen ſo much Juſtice to Declare, That ſhe, being a Daughter of* France, *was full of that Spirit, which* warms the Blood *of Abſolute Monarchs, and, as ſuch, looked upon a limited Authority (that was not to be uſed without Art) as no better than Servitude, and that therefore ſhe made the utmoſt Efforts, to Reſcue the King, her Husband, and herſelf, from under all Reſtrictions.*

To the Father, may be *Added, That the Queen continually Whiſpered in the Royal Ear, the Great Renown of the Civil Laws, by which* France *was governed, and which are advanced in Glory, above all other Laws*; Becauſe they give to Princes, the greateſt Dominion; for, acccording to them, *Quod Principi placuit, Legis habet vigorem*; *The Will of the Prince, is the Law*: And therefore it is no Wonder the Government ſuffered ſome Impreſſions.

The

The Father Declares, *The Queen was zealous for Reſtoring in* England *and* Scotland, *the* Roman *Religion, and followed that Zeal in a lofty Manner, and that, for that End, her Majeſty always kept about her, a Nuncio of the Pope's; to whoſe Character and Function, no Perſon, at Court, was a Stranger*; (meaning doubtleſs) That the Nuncio's Buſineſs was to ſuggeſt and perſuade, ſuch Meaſures as promoted the Popiſh Intereſt; That ſhe, and her *Romiſh* Clergymen, had frequent Controverſies, with the zealous Proteſtants, wherein the King gave her full Liberty, and when ſhe required it, ſupported her; That ſhe ſtood up for every Thing, that Regarded the Authority of the Church, and ſometimes with Heat.

It may therefore be Aſſerted, That a ſecret Cabal, conſiſting of the Pope's Nuncio, and the Popiſh Prieſts about the Queen, *Guided* all the Reſolutions of the State; for *D'Orleans*'s Account ſtands confirmed, by the Noble Hiſtorian, who hath informed us, *That the King had the Queen in perfect Adoration*; *That it was apprehended, the Queen had an irreconcilable Hatred to the Proteſtant Religion*; *That her Power was unqueſtionable*; *That the King was inexorable, in whatever he promiſed her*; *That the Prieſts, in Matters of State, ſatisfied the Queen, and ſhe the King*; *That her Majeſty's Power and Activity was thought too great*; That the general Belief of the People was, *That the Government was Adminiſtred by the Counſels of that Popiſh Cabal*; *That the true Ground of the King's poſitive and unalterable Reſolution, of going to* Scotland, *in* Auguſt 1641. *was myſterious, and not ſufficiently clear, to Standers-by.*

Clarendon, Vol. II. 328. Vol. I. 465, 476.

Vol. I. 428.

Vol. I. 302.

Vol. I. 279.

This being the Compoſition, of the New Councils, it may be concluded, That the Influence of this Cabal, was interwoven with all the State Affairs.

SECT. XIV.

THIS being the Queen's Power and Inclinations, ſhe (at the Inſtigation of her Cabal) prevailed with the King, to raiſe Dr. *Laud*, then Biſhop of *London*, and afterwards Archbiſhop of *Canterbury* (a Man of Spirit, and of an enterprizing Genius) to be prime Miniſter, in Church Affairs; and, after that, *Laud* (with the Queen's Approbation) firſt *gained*, and then *introduced*

duced Sir *Thomas Wentworth*, a Leading Member of the Commons (being a Man of great Capacity and Reſolution) to be Prime Miniſter, in Matters of State, and for that End, to be created Earl of *Strafford*; yet both of them were, to be ſubordinate to the Queen's ultimate Inſtructions: But as *Strafford* was much greater than *Buckingham*, in Perſonal Abilities, he adviſed Methods more Daring and Dangerous.

D'Orleans informs us, *That* Strafford, *owing his Promotion entirely to the Archbiſhop*, Laud, *Devoted himſelf wholly to him, and was the Confident of all his Deſigns*; Mr. *Echard* Writes, *That* Strafford *thereupon became the greateſt Zealot, for Advancing Abſolute Monarchy*, i. e. To enſlave *England*; *and that he, and the Arch-biſhop, entred into a League of Friendſhip, ſo inviolable, That nothing but Death could ſeparate.*

Theſe being the Counſellors, the Sequel proves, their Counſels centred in theſe two Reſolutions.

I. *That for the Advancement of* Monarchical Government, *The Uſe of Parliaments ſhould be laid aſide*; *and that Moneys ſhould be raiſed, and Taxes impoſed, by the ſole Regal Authority, without troubling thoſe Aſſemblies, Either to know the Occaſions, or to give their Counſel or Conſent.*

II. *That there ſhould be an Uniformity in Religion, and that all Proteſtants ſhould be reduced, under Epiſcopacy, both in* England, Scotland, *and* Ireland, *as the moſt ſolid Foundation, for ſecuring* Abſolute Monarchy, *and its Correlative.*

From which, it may be collected, That the People Erred, when they imagined, the Duke of *Buckingham* was the Cauſe of all their Grievances; for Worſe, and more Dangerous Meaſures were, after his Death, undertaken, and put in Execution.

Theſe Counſels and Counſellors, in a Subordination to the Queen and her Cabal, muſt be kept in View, as a Thread that ran thorough the whole ſubſequent Adminiſtration.

To all which Characters of the Queen, it may be added, That this Queen Reſembled too much Queen *Margaret* of *Anjou*, another *French* Lady, Wife of King *Henry* VI.; for both

both Queens were Arbitrary in their Principles, and both of them brought their Husbands to diſmal Extremities. But to return;

The Merchants taking Courage, from the Commons Declaration, refuſed to pay, either the old Cuſtoms of *Tonnage and Poundage*, or the new Impoſitions on Wines; for which, ſome of them, *viz.* Mr. *Chambers*, *&c.* were ſummoned before the Council, and Impriſoned; and the Goods of others were ſeized, with this provoking Circumſtance, That the *Cuſtom-Houſe* Officer who made the Seizure, Inſulted Mr. *Rolls*, a Merchant, by ſaying, *If all the Parliament were in him, he would take the Goods.* Echard 441.

All theſe Inſtances, in which his Majeſty determined the Beings of Parliaments, becauſe he could not determine their *Juriſdiction and Authority*, ſerved only to make their Power more formidable; for this King, and his Parliaments, uſually parted with no other Reſpect or Charity, one toward the other, than accompanies Perſons, who never meant to meet, but in their own Defence: Common Senſe informs, *That thoſe Men, after ſuch Treatment, could never meet again in a free Parliament, without ſharp and ſevere Expoſtulations and Inquiſitions, into their own Rights, and into that Power, that had Impoſed on thoſe Rights*; and, therefore, their Warmth and Vigour is not to be wondred at. Clarendon Vol. I. 8. Vol. I. 4. Vol. I. 5.

SECT. XV.

THE Second Seſſion of this Third Parliament, was opened on the 20th of *January*, 1628, in which the Commons reſolved to begin where they ended the laſt Seſſions; namely, *At the King's continuing to Levy the* Tonnage and Poundage, *Contrary to the Petition of Right.*

The King was pleaſed now to preſs the Paſſing of the Bill, for granting to him *Tonnage and Poundage*, that an End might be put to all Controverſies about that Revenue; and for that Purpoſe, ſent a Meſſage, Urging, *That the Bill for* Tonnage and Poundage, *might be ſpeedily taken into Conſideration, and no Time loſt.*

The Commons inſiſted, *That the Bill ought not to be* Impoſed *on them, but muſt naturally proceed from the Motions of their*

t

their own Houſe; and for that Reaſon, ſuſpended the Bill, whilſt they proceeded upon other Grievances in relation to Religion, *&c.*

The King, thereupon, ſent a ſecond Meſſage, requiring the Houſe *to proceed on the Bill for* Tonnage and Poundage, *and to give* Precedency *to that Buſineſs*; upon which, the Commons reſolved, *That the Conſideration of Religion, ſhould take Place before the Bill for* Tonnage and Poundage.

The King, nevertheleſs, ſent a third Meſſage, ſignifying, *That if the Houſe would diſpatch the Bill, for granting Tonnage and Poundage, they ſhould not be interrupted in Matters of Religion, provided,* they did not Intrench upon that which did not belong to them.

One of the Members (a Courtier) took Occaſion to repreſent in the Houſe, this third Meſſage, as a great Favour and Condeſcention, and admoniſhed them, how dangerous it was, to alienate his Majeſty's Heart from Parliaments; Which Speech was looked upon, as reflecting on the King, as if it could be preſumed, *That his Majeſty's Heart could* (without giving into dangerous Counſels) *eſtrange himſelf from that* Conſtitution, *by which only, his Power and Authority was* (as they Affirmed) *Derived and Supported.*

The Commons, jealous of their Rights, and apprehending theſe Meſſages to carry in them, on one Side, ſomething *Imperious,* and on the other, ſomething ſavouring of *Vaſſallage*; Echard 442. they therefore reſolved, to ſend to the King an Anſwer, *That theſe Sort of Meſſages were Inconvenient, and bred Debate, and Loſs of Time, and that* Tonnage and Poundage *ariſing naturally, as a Gift or Grant from their Houſe, they would, in fit Time, take ſuch a Courſe therein, as ſhould be to his Majeſty's Honour and Satisfaction; and for the preſent, they would proceed in Matters of Religion.*

Immediately after this Reſolution, and during the Debates about Religion, *viz.* On the 10th of *February*, 1628, the Warehouſe in *London*, of Mr. *Rolls*, a Merchant, and Sitting Member, was, by a Purſuivant, Locked up, and he himſelf called out of the Houſe of Commons, and ſerved with a *Subpœna*; and the Goods of ſeveral other Merchants, were ſeized, and

and Informations preferred againſt them, for Non-payment of *Tonnage and Poundage*.

When the Bill for granting the Tonnage and Poundage, came before the Houſe, the famous Mr. *Noy* was pleaſed to argue after this Manner; *We cannot ſafely give, unleſs we be in Poſſeſſion; for it will not be a Gift, but a Confirmation; neither will I give, without a Declaration in the Bill*, That the King hath no Right but by our free Gift; *if it will not be accepted, as it is fit for us to give it, we cannot help it; if it be the King's already, we do not give it.*

And, in a few Days after, whilſt the Houſe was Debating of Reparations, and of the Puniſhment of the *Cuſtom-Houſe* Officers, his Majeſty ſent a Meſſage, declaring, *That what thoſe Officers had done, was done, by his direct Order and Command*; and ſoon after, when the Houſe, out of Deference to his Majeſty, endeavoured to diſtinguiſh, between the Intereſt of the Farmers of the Cuſtoms, and the Commandment of the King, his Majeſty ſent them another Meſſage, *Thanking them, for their Reſpect to his Perſon; but declared, He could not diſavow his own Orders.*

By this, and ſome other Steps, on his Majeſty's Part, in order to an Adjournment of the Houſe, and to Evade the Proceedings about *Tonnage and Poundage*, the **Breach** between the King and the Commons, was perfected, and made Incurable; for his Majeſty immediately, and during the Sitting of the Parliament, ordered out Warrants, all Signed with his own Hand, directed to Nine of the leading Members, commanding them, next Day, to appear before the Council; and upon their appearing, and refuſing to anſwer, out of Parliament, for what was ſaid and done, in Parliament, his Majeſty cauſed them to be **Committed** cloſe Priſoners to the *Tower*, and the Studies of three of them, to be Locked up. Echard 441.

The Queen obſerving, how Inflexibly the Commons adhered to their own Proceedings, and that their Power of *Giving or Denying Money*, produced that Stiffneſs, ſhe (or rather the *Nuncio*, and the Popiſh Prieſts about her) laid before the King (as the Product of her Country) the Example of *France*, ſhewing how that Crown had acquired the Power to Impoſe Taxes, and Levy Money, without Parliaments, and had changed the

Nature of them, from being Controulers, to be good Counſellors.

That the *French* King had Conceded to an Act of Parliament, declaring, *That no Money ſhould ever be Levied on the Subjects, without Act of Parliament*; but covertly procured theſe few Words to be Inſerted (**except in Caſes of extreme Neceſſity**) which, to the heedleſs Aſſembly, ſeemed to be Words of Courſe, and to mean no Hurt.

They Repreſented, That this *Exception*, had furniſhed their Kings with an Inexhauſtible Fund of **Neceſſity**, which, when the King averred, no Man durſt contradict; by Virtue whereof, the *French* Government had **Impoſed** Taxes, and Raiſed Money, at their Pleaſure, without Parliaments.

The Queen's Party argued, That the *Neceſſity* expreſly Excepted out of the *French* Act of Parliament, was merely ſuperfluous; foraſmuch as *Neceſſity*, is Implied, and Excepted out of all Laws, and that the Power accrewing therefrom, might, in all Caſes (where *Neceſſity* appeared) be put in Practice.

That as to the Parliament, the Root of all Power Reſided in the King, in Regard it was the Royal Command, that gave them Power to meet and come together, without which Call, they had no Authority to *Aſſemble*; and, conſequently, that That Power which called them, was to tell them their Buſineſs, and might preſcribe to them, what they ſhould, or ſhould not, do; and that if they were Refractory, the ſame Power that called, might, with as much Eaſe, diſperſe, and ſend them Home, and put in Practiſe ſuch Regal Powers, as ſhould accrew from the *Neceſſity*, to which the Government would, by their Defaults, be Reduced and Expoſed.

And the King being forward to engage in Enterprizes, promiſing ſuch Advantages, and being delighted with theſe Foreign Politicks, his Majeſty reſolved to imitate the *French* Example; and having imbibed the Queen's Principles, and being heated with his own, and the Parliament's, Proceedings, his Majeſty, on the 10th of *March*, 1628, went to the Houſe of Lords, and being Seated on the Throne, in his Royal Robes, and the Crown on his Head, and the Lords in their Robes, his Majeſty, *without ſending* for the Commons, ſpoke to this Effect:

My

My Lords, *It is merely the undutiful and ſeditious Carriage, in the* **Lower-houſe**, *that hath made the Diſſolution of this Parliament neceſſary; I am juſtly diſtaſted with their Proceedings, though, it is but ſome few* Vipers *among them, that have caſt this Miſt of Undutifulneſs, over moſt of their Eyes: To conclude, my Lords, theſe Evil-affected Perſons, muſt look for their* Puniſhment.

And then the King ordered the Lord Keeper to Declare this Parliament to be Diſſolved, which was done accordingly, without paſſing one Act in this Seſſions.

SECT. XVI.

MY Lord *Clarendon* was pleaſed to Write, *That this was the Time, when it was diſcovered, That a brisk Reſolution had been taken, of declining the Uſe of Parliaments, and to govern without them*: For ſoon after this Diſſolution, his Majeſty cauſed formal Declaration, as an Appeal to the People, to be publiſhed, ſhewing the Cauſes which moved him to diſſolve this Parliament, in which were ſet forth, not only Invectives againſt many of the Members, but, by Way of Argument, his Majeſty aſſerted his Right, to levy the *Tonnage and Poundage*, and on the 27th of that ſame Month of *March*, the King iſſued out his Royal Declaration and Mandate, by a Proclamation under the Great Seal of *England*, whereby his Majeſty took Notice, *That the* **Calling** *again of a Parliament, was for ill Ends divulged and ſpread abroad*; his Majeſty did therefore Declare, *That the late Abuſes, had* Driven him out of the Courſe of frequent meeting his People in Parliament: And did Command his Subjects, *not to preſcribe to him any Time, for Parliaments*, (the natural Import whereof was, as was generally underſtood) *That his Majeſty had aſſumed an Authority, to lay aſide Parliaments, and by his Regal Power, to govern without them, and thereby alter the Form of Government*; for if the Subjects were ſtripp'd of their Liberty, to ſpeak of Parliaments, which was all they could do towards the preſcribing the Time for holding them *à multo fortiori* were they deprived of their Right to petition for Parliaments.

Vol. I. 8.

Vol. I. 67.

Echard 444.

Clarendon. Vol. I. 67.

From

From theſe plain and inconteſtible Facts, may be taken, not only a View of the Matters controverted, between this King and his Parliament, *viz. What were the* **Powers**, *his Majeſty aſpired to?* and *What were the Rights, the Lords and Commons contended for.*

Vol. I. 4,67. My Lord *Clarendon*, upon this Occaſion, is pleaſed to write, *That from this Proclamation, by which all Men took themſelves to be prohibited, upon the Penalty of Cenſure, ſo much as to ſpeak of Parliaments, or ſo much as to mention, that Parliaments were to be again called*; the People argued, and concluded, *That no more Parliaments were to be Expected*; and that therefore, there was really an Intention to **Alter the Form** of Government, of which (ſaid they) *a greater Inſtance cannot be given, than this publick Declaring* (as it was Interpreted) *That we ſhall have no more Parliaments.*

SECT. XVII.

IN the Interval between this Parliament and the next, which continued above twelve Years, and, during the Time, in which it was apprehended, *That there was never to be any more Parliaments*; the King's Miniſters, by whom he adminiſtred, gave themſelves over to Licenciouſneſs, and to wanton Acts of Power; for they, thinking themſelves freed from Parliamentary Inquiſitions, and being above the Reach of Ordinary Juſtice, and ſecur'd from Extraordinary, imagin'd *That* no Fault, which was like to find no Puniſhment: Supplemental
Vol. I. 67. Acts of State (*i. e.* Proclamations) were therefore made, and iſſued, to ſupply Defects in Law. *Tonnage and Poundage*, and other Impoſitions on Merchandize, were collected, by Order of the Board; and, in particular, the Members Turn, came now to be puniſhed, according to the King's Threatnings, at the Cloſe of the laſt Parliament; by which the principal Privilege, *viz.* Freedom of Speech, was (as the Miniſters hoped) to be Extinguiſhed: The Miniſters therefore cauſed Three Members of of the Houſe of Commons, *viz.* Sir *John Elliot*, *Denzil Holles*, and *Benjamin Valentine*, to be proſecuted by his Majeſty's Attorney-General, for Words by them ſpoken, in their Debates in Parliament.

The

The Words were these, *The King's Privy-Council, his Judges, and his Council Learned, have conspired together to Trample under their Feet the Liberties of the Subjects of this Realm, and the Liberties of this House.*

To this Information, these Members pleaded, *That these Words being spoken in their* Debates in Parliament, *the same ought to be there examined and punished, and not elsewhere*; but, without Regard to Parliamentary Privileges, these Members were condemned, as **Disturbers of the State**, and fined, *viz.* Sir *John Elliot*, 2000 *l.* Mr. *Holles*, 1000 Marks, and Mr. *Valentine*, 500 *l.* and all of them were imprison'd 'till they should pay their Fines; which **Imprisonment** was accompanied with some Arbitrary Severities; for these Gentlemen were Denied, not only Pen, Ink, and Paper, but their Wives were, in their Sicknesses, Denied Admittance; and, consequently, the Rigour of the Punishment comprehended an additional Sentence of *Divorce*, between them and their Wives; insomuch, that Sir *John Elliot*, after many Years Confinement, sunk, and died under the Oppression.

But this Prosecution and Condemnation, being a **Wound** given to the Two Estates of Lords and Commons, in their tenderest Privilege, and having raised great Discontents, was, in the Reign of King *Charles* II. Reversed, and unanimously Declared *Illegal*; In which Reversal, as in a Looking-Glass, the Prosecution, and Imprisonment, and Death of that Patriot, and the **Power** of the Ministers, by which he, and, in him, the Undoubted Rights and Privileges of Parliament, and of all the Commons of *England*, were trampled under Foot, appear at this Day, in Colours Administring a Detestation of such Proceedings.

At this Time, *Walter Long*, Esq; was, in an unprecedented Manner, prosecuted in the Star-Chamber; for that he, being High-Sheriff of *Wiltshire*, had suffered himself to be chosen a Member, for *Bath* in *Somersetshire*, and had accordingly attended in Parliament, absenting himself, during that Time, from *Wiltshire*: He was condemned, and fined 1332 *l.* and imprisoned in the Tower, during the King's Pleasure. This was an Addition to the Number of Violations, of Parliamentary *Privileges*, which, in these Times, were treated as the Vilest Clogs to Government; Baker 446.

vernment; especially since that Question had been lately determined, in Favour of Sir *Edward Coke*, late Lord Chief Justice; who being made High-Sheriff of *Buckinghamshire*, on purpose, to prevent his being chosen a Member of Parliament, had nevertheless been chosen a Member for a Borough, in another County; and his Election had been voted, and resolved to be good, by the House of Commons.

SECT. XVIII.

THE King's Ministers being thus freed of Fear, Quartered upon Private Houses and Families, great Companies of Soldiers and Mariners.

Many People were Executed, and put to Death by Martial Law, who ought to have been tryed by the Law of the Land; and others, by the same Martial Law, exempted, from the Punishments which, by the Law of the Land, they Deserved; which raised an Asperity in the Minds of more than of the Common People.

Clarendon, Vol. I. 41.

Prynne. Burton. Bastwick.

The Ministers caused three Gentlemen, each of Figure and Quality in their several Professions, *viz. Divinity*, *Law*, and *Physick*, to be prosecuted in the Star-Chamber, and there treated roughly, by cutting off the Ears of one, and branding all their Faces and Foreheads with hot Irons, for no greater Offences, than Writing about Disputed Points of Church Government; and, to make their Punishments the more signally scandalous, and terrible, the Execution was exposed on Scaffolds, that all Men might see, and, in some Measure, feel the Effects of an Unlimited and Arbitrary Power.

The Cruelty therefore of these Corporal Punishments, which were Arbitrary, and imposed, for no Offence against the Law, for which such a Punishment could be inflicted, bound down all Gentlemen under a Servile Fear of the like Treatment.

The Imprisonment of these Gentlemen in three the remotest Castles in the Kingdom, *viz.* one at *Carnarvon* in *Wales*, another at *Lancaster*, and the third at *Launceston* in *Cornwall*, was Unprecedented; and because that Severity was inferior to the Displeasure, their Banishment to three Islands, beyond the Seas, and Imprisonment therein, *viz.* one of them in *Jersey*, another

in *Guernſey*, and the third in *Scilly*, appeared to the People as Imperious Acts, of a Power that had no Limits, but its Will and Pleaſure: This Sort of Adminiſtration, therefore, encreaſed thoſe ſecret Animoſities, which at laſt broke out impetuouſly, and overturned the new Principles, and the Superſtructures on which this **Power** was Seated.

His Majeſty's Miniſters Levied Monies, by Fines and Impriſonments, upon all Men, of 40 *l. per Annum*, and upwards, who refuſed to take upon them, the Order of Knighthood, tho' they, in Reſpect of their Eſtates and Qualities, were altogether unfit for that Order.

For the better Support of theſe extraordinary Methods, and to protect the Agents and Inſtruments, who muſt be employed in them, and to Diſcountenance and Suppreſs, all bold Enquiries and Oppoſers, the Noble Hiſtorian writes, *That the Council Table, and Star Chamber, were influenced to enlarge their Juriſdiction to a vaſt Extent, holding for Honourable, that which pleaſed, and for Juſt, that which profited; and being the ſame Perſons, in ſeveral Rooms, grew, both Courts of Law to determine Right, and Courts of Revenue, to bring Money into the Treaſury; the Council Table, by Proclamations, Enjoining to the People, what was not by Law Enjoined, and Prohibiting that which was not Prohibited; and the Star Chamber cenſuring the Breach and Diſobedience to thoſe Proclamations, by great Fines and Impriſonments, ſo that any Diſreſpect to any Acts of State, or to the Perſons of Stateſmen, was in no Time more Penal; and thoſe Foundations of Right, by which Men valued their Security, to the Apprehenſion and Underſtanding of wiſe Men, never more in Danger to be* Deſtroyed; *for though many were thoſe Illegal Sufferings, yet mere Complaints, were counted new Offences.* Vol. I. 68.

The High Commiſſion Court, in Eccleſiaſtical Cauſes, exerciſed equal Exceſſes: By all which unpleaſing, and provoking Methods, the King received vaſt Sums of Money, not only from Perſons of Quality, but from Perſons of any reaſonable Condition, throughout the Kingdom. Vol. I. 67

SECT.

SECT. XIX.

BUT the **Deepeſt** and moſt dangerous **Wound**, that was ever given to this Conſtitution, was the aſſuming a Legiſlative Power, to **Impoſe Taxes** in a new Manner, by Framing Writs in a Form of Law, and Sending thoſe Writs, or Royal Mandates, called Ship-Writs, to each Sheriff in *England* and *Wales*, Commanding him, as a Miniſter of Juſtice, to Execute the King's Orders (as if the ſame were legal Judgments, given in a Court of Juſtice) to Levy Money upon the Subjects, by Pretence of his Regal Power and Prerogative, without any Grant thereof in Parliament.

Clarendon, Vol. I. 68.

This Expedient, or new-invented *Legiſlative Authority*, was looked upon, as well by the King's Miniſters, as by the People, to be a Spring, or *Magazine*, that ſhould have no *Bottom*, and as an everlaſting Supply for all Occaſions, and that it would remove the very **Need** of Parliaments; for *Baker*, in his Hiſtory, Writes, *That the King had* (before *Selden*'s Writing his Book called *Mare Clauſum*) *well adviſed, how to* Enable himſelf *with Treaſure to Support his Power*; And *Sanderſon* Writes, *That the King had*, in the Year 1628, *Reſolved, to lay aſide the Uſe of Parliaments, and to imitate what had been done, of that Kind in* France; *and, moreover, that the King had ſo well ſucceeded in the Deſign, that the People had laid aſide the Thoughts of Parliaments, and that the King had learned to* Stand on his own Legs, *without troubling thoſe Aſſemblies.*

Baker, 454. Sanderſ. 134, 285.

To Support, therefore, the new Project of Ship Money, when ſome Oppoſition was obſerved to ariſe, a Letter was ſent to the Judges, with a Caſe incloſed, both Signed with the King's own Hand; the Letter took Notice, *That the* Judges *were beſt ſtudied, in the Rights of his Majeſty's* **Sovereignty**, *and therefore, he required their Opinions in the Caſe.*

Baker, 455.

The Caſe, or Queſtion, was this, *When the Kingdom in General, is in Danger, whether the King may not, by Writ, compel his Subjects, to furniſh ſuch Number of Ships, with Men, Victuals, and Munition, and for ſuch Time, as his Majeſty ſhall think fit? And whether the King is not the ſole Judge of the Danger, and of the Means to prevent it?*

The

The twelve Judges, inſtead of adviſing his Majeſty, that in the Caſe, was comprized Matter, that was one of thoſe *Grandia Regni*, about which, the King, by the Conſtitution, was obliged to Aſſemble, and Conſult with his Parliament; and inſtead of informing him, That **no part** of any Man's Freehold, or Property in Lands, Goods, or Money, or, which is all one, No Part of the Profits thereof, could be taken from him, by any Authority, other than the *Legiſlative Authority*, which his Majeſty, by himſelf ſolely, had not; I ſay, the Judges, (without ſo doing) readily gave their extrajudicial Judgments, under all their Hands, *That the King might* (in that Caſe of **Neceſſity**) *Compel his Subjects, to furniſh ſuch Number of Ships, with Men, Victuals, and Munitions, and for ſuch Time, as his Majeſty ſhould think fit, and that the King was the* **ſole Judge** *of the Danger, and of the* Means *to prevent it.* This was none other than to ſay, *That the King had Power to declare there was Danger, although no other could ſee that Danger; and that his Declaration concluded, and Eſtopped every Man, to deny the Danger; and that when the King ſaid there was Danger, all Mens Properties were at his Will, to take what he pleaſed to prevent that Danger.*

One would have thought, a ſmall Share of Penetration might have ſeen thorow the Fallacy and Flattery of ſuch an Oblation of *England*'s Liberties; and, therefore, from the Proceedings, upon the Foundation of this Wild Opinion, the Propenſity of the Managers, in thoſe Times, to an Arbitrary and Unlimited Power in Government, was unhappily Expoſed.

This Opinion was ſurprizing, for theſe obvious Reaſons;

I. *Becauſe the Poſition had been ſo lately, and ſo ſolemnly, Condemned, by the ſupreme Judicature, in the Caſe of Doctor* Mainwaring.

II. *Becauſe it is not apprehended*, That there is any Law, by which one Subject can *Compel* another Subject to go on Board, or Serve, or Fight, in any Ship at Sea, though it be for the neceſſary Defence of the Kingdom; *and therefore the Ship Writs, Commanding the Subjects to do an impoſſible Thing, were, in that Caſe, Illegal; for* Lex non Cogit ad Impoſſibilia.

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III. *Becauſe the Writ itſelf was* Felo de ſe; *for it ſhewed,* That the Danger, (*if any ſuch really were*) or the Neceſſity ariſing from it, was not ſo imminent, but that a Parliament might have Given and Raiſed the Money required, with much more Expedition; *for a Parliament might have been Aſſembled, and have ſate in Forty Days: whereas theſe Writs were Dated in* Auguſt, *and ordered the Ships to be ready in* March *following, being about Seven Months, or Two hundred Days, after their Date, which was a Space of Four Times as long, as the ſame Thing might have been done, in a Proceeding that was Legal and Parliamentary.*

IV. *Becauſe the Stile of the Writ was ſo Imperious, as to call ſuch as ſhould refuſe to pay this Ship Money,* **Rebels**, *and commanded the Sheriffs,* To take and Impriſon them as Rebels, 'till his Majeſty ſhould give further Order.

The King's Miniſters, nevertheleſs, cauſed this Extrajudicial Judgment, or Opinion, to be entred on Record, in all the Four Courts at *Weſtminſter*, to be perpetuated as an Evidence of that Point of Prerogative, or Supreme Law of Government, which was then aſſuming.

Echard 459. And Judge *Berkeley* was ſo Violent and Zealous, in Supporting this Regal Impoſition of *Ship Money*, that when the Cauſe of one *Chambers*, a Merchant, who had brought an Action for falſe Impriſonment, againſt the Lord Mayor of *London*, for Committing him for Non-Payment of the Ship-Money, came to be Tryed before this Judge, he would not ſuffer the Legality of **Impoſing** that Tax, to be Argued, but declared in open Court, *That there was a* Rule *of Law, and a* Rule *of Government*; *and that many Things which might not be done by the* Rule *of Law, might be done by the* Rule *of Government.*

SECT. XX.

YET notwithſtanding theſe Diſcouragements, and after this *Ship-Money* had been levied about four Years, That Heroic Commoner *John Hampden* of *Hampden* in the County of *Bucks*, Eſquire, being Armed with the Conſtitution, and the Law of the Land,

Land, ſtepp'd forth (and he was the Firſt that did ſo) to Combate this new Machine of Arbitrary Power, by which the *Rights*, Privileges and Authority of the two Eſtates of Lords and Commons were Invaded, and near being expelled this Nation; And inſiſted, *That this Way of Impoſing Taxes, and Levying Money, without a Grant thereof in Parliament, was Arbitrary, and Illegal; and did attract to the Crown, the whole Legiſlative Power*: He therefore brought the ſame in Judgment, in the proper Court of Law, and ſingly pleaded the Cauſe of *England*.

And amongſt the Variety of Arguments againſt the Regal Power, to impoſe Taxes, and levy Money, it was aſſerted, *That the Navy, or Ships of War, were Creatures, which the Treaſures of the People*, i. e. *Each Man's Contribution, of a Part of his Property or Eſtate, had formed and created, and did feed and maintain: That the End of their Creation and Maintenance was, to* **Defend** *(from being ſubverted or deſtroyed by Foreign Enemies) this Conſtitution, and thoſe ſingular Rights and Privileges, of the two Eſtates of Lords and Commons, by which the* People *of this Nation, are diſtinguiſhed from all others, and eſpecially that moſt important, and invaluable of them, the ſole Right and Power over their own Properties, Excluſive of all other Powers*; which may be Negatively rendered as before, *That no Part of a* Briton's *Freehold or Property can, by any Power, or for any Pretence or Occaſion whatſoever, be taken from him, but ſuch Part only, as the Commons ſhall give, and the Lords conſent to, in Parliament*; which great and Hereditary Privilege, did indeed infer a *Neceſſity*, when Monies were wanted, to call a Parliament, and to lay before them, ſuch a Caſe or Danger, as may induce them to **Give**, the Monies required.

But all the Judges, having before agreed, and prejudged the Queſtions (except *Crook* and *Hutton*, who receded) gave Judgment for the King, againſt Mr. *Hampden*, *viz. That the King, by his Regal Power and Prerogative, in the Caſe of imminent Danger, and in the Caſe of* **Neceſſity**, *ariſing from that Danger, might compel his Subjects, to furniſh him with Aids, without Act of Parliament*; *and that the King was the* **ſole Judge** *of the Danger, and of the Means when, and how to prevent it*; *and that the King's* **Averment**, *or Suggeſtion of Danger and* Neceſſity, *in his Royal Mandates, called* Ship-Writs, *was*

was not **Traverſable**; that is, *That the Subject was not to be admitted to deny, or queſtion, what the King was pleaſed, in that Behalf, to declare and averr, and that the King might repeat this Method, of Impoſing Taxes or Aids, without Grants thereof in Parliament, as often as there was Danger and* Neceſſity, i. e. *as often as he was pleaſed to averr and declare there was Danger and* **Neceſſity**.

SECT. XXI.

IN this Judgment, all the Judges (except the two above named) concurred; but ſome of them varied their Expreſſions, about the Foundation, on which they built their Opinions; to the Effect following:

Mr. Baron *Weſton*, argued thus, *Whereas it is objected, That if this* **Power** *of raiſing Money, were admitted, it will keep back Parliaments, in Regard the King might pretend Danger, where there was none, or a great one, where it was but ſmall; I anſwer, That this Objection cannot be made, without ſuppoſing* Injuſtice *in the King: Make what Laws you will, if the King be unruly, He will break them. For my Part, I am ſatisfied, That there is an apparent Danger, and there is a* **Neceſſity** *this Danger ſhould be prevented.*

Mr. Juſtice *Crawley*: *The King, by his Royal Prerogative, in Caſes of* Neceſſity *and Danger, may,* Jure Gentium, Charge *his Subjects,* **without** *Conſent of Parliament; For, in the King, there are two Kinds of Prerogatives,* Regale *and* Legale, *the firſt concerns his Perſon, the ſecond his Lands and Goods; the firſt Regal Prerogative, which contains all the reſt, is,* That the King may **Give Laws** to his Subjects, and, as a Conſequence, may *impoſe* Taxes, without Conſent of Parliament. *Admit, I ſay, there was an expreſs Act of Parliament,* That the King, when the Realm is in ever ſo much Danger, ſhould not have Aid from his Subjects, but in Parliament, *It is a void Act; Will any Man ſay,* ſuch an Act ſhall bind? This *Power is Inſeparable* from the Crown. *Such an Act therefore is manifeſtly unreaſonable, and not to be* **ſuffered**. *That it is neceſſary, in ſome Caſes, to* Leave *the Words of the Law, and to* follow *that which Reaſon and Juſtice* requireth; *for the Law of Reaſon is tacitly underſtood to be an* Exception *out of the general Rules*

Rules of Law; and this **Impoſition**, *without Parliament, appertains to the King* Originally, *in Right of the* Sovereignty *of his Crown; you cannot have a King, without thoſe Royal Rights,* no, not by Act of Parliament: *The Danger and* Neceſſity *appear, in the Record, to be greater than the King,* without the Aid *of his Subjects can reſiſt; Whither muſt the King reſort to Parliaments? No, let the Subjects reſort to the King, whoſe Prerogative and Right of Sovereignty is, to* **Defend** *the Realm, and* Maintain *his Subjects Liberties.*

Mr. Juſtice *Berkley; Whereas Mr.* Hampden's *Counſel ſuppoſe,* That the Fundamental Policy, in the Creation and Frame of this Government, reſtrains the *Monarch* of *England,* from taking any Thing from his Subjects, but by common Conſent in Parliament; *He is utterly* miſtaken; *I utterly* **Deny** *ſuch a fancied Policy; The Law knows no ſuch a King-Toaking Policy: There are two Maxims of Law, that diſprove ſuch a ſuppoſed Policy,* viz. I. The King is **Truſted** with the State of the Common-Wealth. II. *The King* can do no Wrong. *Upon theſe Maxims, the* Jure Summa Majeſtatis *are grounded, with which none but the King himſelf,* **not his Parliament**, *without Leave, hath to meddle; as namely,* War *and* Peace, *Value of Coin, Parliaments at* **Pleaſure**, *Power to* **Diſpence** *with Penal Laws, the Regal Power, to* **Command** *Aids from his Subjects, in Caſes of* Neceſſity, *for the Preſervation of* Salus Reipublicæ; *or elſe, how can the King be ſaid to have the* **Majeſtical** *Right and Power of a* free Monarch? *the King, of mere Right, ought to have, and the People, of mere Duty, ought to yield unto the King, Supplies, for* Defence *of the Kingdom; for the ſame Law, that Wills the King to* Defend *his People, Wills alſo, that the People grant to him of their Goods, in Aid of their* Defence. *Give me Leave to ſay,* The Parliament is but a **Concilium**; The King may Call it, Prorogue it, and Diſſolve it, at his Pleaſure, and whatſoever he does therein, is always to be taken, as Juſt and Neceſſary; **Neceſſity** is a Relaxation of Laws, and ſerves for a Diſpenſation. *In this Caſe, there is a* Neceſſity *in Point of Government:* Neceſſity *and the* Salus Reipublicæ, *are, by a reaſonable Intendment, clean out of the Statutes* de Tallagio non concedendo, *and the* Petition of Right, *as if the ſame were preciſely* Excepted: *A Literal Expoſition will make Laws, for the Good of the Common-Wealth, prove the Bane and Ruin of it; Therefore,* Caſes *of Neceſſity, Caſes of* Bonum Publicum,

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and Caſes *of* Salus Reipublicæ *are not comprized within ordinary Rules, there may be* Damnum ſine Injuria.

Mr. Juſtice *Vernon*; *Statutes Derogatory from the Prerogative,* **bind not** *the King, and the King may* **Diſpenſe** *with any Law, in Caſes of Neceſſity.*

Mr. Baron *Trevor*; *Our King hath* as much Power, *and Prerogative, as* any Prince, *What Policy is there to make State Affairs known to the People? Who can tell,* better *than the King, when there is Danger, or how to prevent it?*

Mr. Juſtice *Jones*; Salus Populi eſt Suprema Lex, qui ſentit commodum ſentire debet & Onus; quod omnes tangit ab omnibus debet ſupportari; *Theſe Rules intimate,* That when Danger is *imminent,* the Charge muſt be borne by all; it muſt not be every Kind of Fear or Rumour, that muſt draw a Burthen on the Subject; but ſuch a Danger, as the King, in his Underſtanding, **perceiveth** doth require a ſpeedy *Defence*; *This Power of the King, of which I argue, is a ſpecial Prerogative in Point of Government.*

Lord Chief Baron *Davenport*; *Aids granted by Parliament, are not merely voluntary, but* **Duties**; *This* Imperial *Power of Commanding Aids, in Caſe of* Neceſſity, *belongs to the Crown: I heartily acknowledge it; it's Reaſon it ſhould be ſo: The King, in* Expectancy *of Danger, may charge his Subjects,* without *Parliament; for,* Neceſſitas non eſt Lex temporis; *the Expectation is not Traverſable; No Statute, though perpetual, binds in Caſe of* Neceſſity; *for if an Act of Parliament ſhould* Reſtrain *ſuch a Charge, in Caſe of Neceſſity, it would be* Felo de ſe, *and ſo void; for it would deſtroy the* Jus Regale.

Sir *John Finch,* Lord Chief Juſtice of the *Common Pleas*; *The* **Power** *of laying this Charge, is, by the Fundamental Policy of the Kingdom,* ſolely *Inveſted in the King; That the Kingdom's* Defence, *muſt be at the Kingdom's Charge, is proved from the Law of Nature; for every Thing in Nature, ought to* Defend itſelf; *The King hath a* **Property**, *in every Subject's Goods, for the Common Good, in Times of Neceſſity: None can Share with the King, in his* **Abſolute Power**; *The King is not bound to call a Parliament, but when he pleaſeth, nor to continue it, but at his Pleaſure; There was a King* before *a Par-*

Parliament; *for how, elſe, could there be an* Aſſembly *of King, Lords, and Commons? And then, what* Sovereignty *was there in the Kingdom, but His? The* Law *that gave the King, the* Sovereignty *of Defending, gave him alſo* Power *to charge his Subjects, for the neceſſary* Defence *of the Kingdom*; *Private* Property *muſt give Way to the Publick, and publick* Property *muſt take Place*; *This King will charge his Subjects, but only, upon urgent* Neceſſity; *An Act of Parliament* cannot *Bar a King of his Regality, nor* Bind *him, not to Command his Subjects Goods or Money.*

This Chief Juſtice did not content himſelf, in ſaying theſe extraordinary Things, but was pleaſed, by Way of Reproach, on the two Judges (*Crook* and *Hutton*) who receded, to publiſh in open Court, what had paſſed, between his Majeſty, and the Judges, in private, about their Engagements, to Support this New, and Unlimited, Prerogative, to **Impoſe** Taxes, and Raiſe Money, without a Grant thereof in Parliament; which, at this Day, ſeems to Involve the King, in this Affair, as the Original Author and Influencer, and, as ſuch, to be both Judge and Party, repreſenting the Judges Part, to be none other, than as Aiding and Aſſiſting, in the **Wrongful Impoſition.** Hampden's Tryal, 196. Echard 459.

Sir *John Brampſton*, Lord Chief Juſtice of the *King's Bench*; *There is a* Neceſſity, *to prevent a Neceſſity*; *There is this Diſtinction*, The Aid commanded in this Caſe, is not a *Tallage*, *i. e.* It is not a Cutting away a Part of a Man's Property, but a Command to do a publick **Service**, in finding a Ship, *&c.* to defend againſt the Danger.

The Judges had forgot, that the Conſtitution had made, the **Defence** of the Kingdom, one Part of the Parliament's Buſineſs, as appears by the expreſs Words, of the Writ of Summons; and, conſequently, the King could be under no *Neceſſity*, to do, That himſelf, which was the proper Buſineſs of his Parliament.

SECT. XXII.

MOST of the Judges endeavoured to fetch Support from that Antient Maxim before Inſtituted, *That the King can do no Wrong*; which Maxim, to avoid Imputing to the King wrongful Acts upon Mens Poſſeſſions, and to prevent his gaining Profit;

Profit by them, chose rather to determine those Acts of the King, to be Null and Void, and to have no Effect for his Profit; though the Law, in Favour of long Possessions, permits Subjects, by the like wrongful Acts, upon one another's Possessions, to gain Advantages. The Reason of the Difference is, because those Acts of the King, could not be Adjudged Effectual, for his Profit, without Adjudging the King, at the same Time, to be a Wrong-Doer; and therefore this Maxim doth, in Effect, Disable the King to do *Wrong*, and not Justify, or Alter, the *Nature* of the Action, to Convert the *Injustice* of it, into Justice; for that would *Confound* Nature it-self: It would be to say, *That such an Act*, if done, *would be a most wicked Thing; but if the King does it, it will be Right; for the King can do no Wrong, either to God or Man.*

The Literal Sense of this Maxim, which the Judges made Use of, to Support the King's Power, did Include and Support many Inconsistencies, confounding all Distinctions between Right and Wrong; for if Nothing that the King did, could be Wrong, then every Thing that he did, must be Right, and he ought not to be disturbed in the doing whatsoever he pleased: Or else the Argument may be Stated in this other Form, *That every Thing, for which the Law hath appointed no Punishment, can be no Fault; But the Law hath appointed no Punishment of the King, for any Act that he Doth*; Ergo, *Whatever he does, can be no Fault, or Wrong*: This Sort of Reasoning, makes the King Absolute from all Laws, Dissolves all the Obligations Instituted by his Constitution, and Resolves All into his own Will and Pleasure; for all his Acts must necessarily be the Emanations and Effects of his Will, and, therefore, his Will must necessarily be the Measure of Right and Wrong: Nothing, therefore, could, in Nature, be more Arbitrary.

The Constitution, and Law of the Land, says, *Every Man hath a Right to the Liberty of his Person, and to the Property of his Lands, Goods, and Possessions, not to be Violated, or Taken from him, but by due Course of Law*; but the Judges General Exposition of this *Maxim*, says, *That if the King take from any Man his Liberty, by Imprisoning him; or his Life, by Slaying him; or his Property in Lands or Goods; or even his Wife, and Violate her*; All these Acts must be *Right*: For if they cannot be *Wrong*, they must necessarily be *Right*; They cannot be, at the same Time, both *Right* and *Wrong*.

SECT.

SECT. XXIII.

IT may be added, That the Arguments drawn from a Pretence of *Neceſſity*, were the moſt Fallacious and Impolitick, that were ever advanced; for as the King, under a Pretence of *Neceſſity*, for Money to ſupport his Government, without Parliaments, did *Wreſt* from the Lords and Commons, their Rights, and their *Power* of Giving it; ſo he taught the Parliament, in their Turn, by the like Arguments, drawn from the **Neceſſity** of Preſerving themſelves from Deſtruction, to *Wreſt* from his Majeſty, the Right and *Power* over the Militia.

It is obſervable, That the Judgment in the Caſe of Ship-Money, **Bound** all Men; for the Judges would never afterwards ſuffer that Queſtion, *Whether the King could* **Impoſe** *Taxes, and Levy Money, without a Grant thereof in Parliament*, to be *again Argued* or Debated; and therefore it may be juſtly ſaid, *That that Hero Mr.* Hambden *only, Engaged and Contended with Arbitrary Power, in the* **Cauſe** *of Liberty, and of the Freedom of* England.

For Mr. Juſtice *Crawley*, at an Aſſizes in the Weſtern Circuit, Aſſerted publickly, in the Face of the Country, *That this Power of* **Impoſing** *Taxes for Aids, was a Right or Flower of the Crown, ſo Inherent, that* **no Parliament** *could take it away*; meaning (doubtleſs) *That no Parliament could Aboliſh this Judgment, becauſe the Judgment had Aboliſhed the Parliament*: And Mr. Juſtice *Berkley* was pleaſed (when Sitting on the Bench at *York* Aſſizes) publickly to declare, to the Country, *That the* Judges *were, in ſome Caſes,* **Above** *Parliaments*: And Sir *John Finch*, now made the Lord Keeper, who took up the Buſineſs of Ship-Money, where Mr. *Noy* left it, at his Death, did, upon a Demurrer put into a Bill before him, which had in it, no other Equity, than an Order of the Lords of the Council, declare, *That whilſt he was Keeper, no Man ſhould be ſo* Sawcy, *as to Diſpute thoſe Orders; but that the Wiſdom of that Board, ſhould always be* Ground good enough, *for him to make a Decree in* Chancery.

It may be remembered, That the *Clergy* participated with the Judges in the *Frenzy*, inſomuch, that ſoon after Mr. Juſtice

Hutton had Argued in the *Exchequer* Chamber, againſt the King's Power to **Impoſe** the Tax of Ship-Money, the Reverend Mr. *Thomas Harriſon*, Parſon of *Creeke*, in *Northamptonſhire*, being heated with *Prerogative Notions*, preſſed up to the Bar, of the Court of *Common Pleas*, in *Weſtminſter-Hall*, and *Accuſed* that Judge, then Sitting on the Bench, *for High Treaſon*; but being proſecuted for that Miſdemeanor, the Parſon, with Sincerity and Probity (though Erroneous) declared, *That the Reaſon, why he made that publick* Accuſation, *was, Becauſe the Judge, by Denying the King's* **Power** *to Impoſe Ship-Money, had denied the King's* Supremacy, *which was, as he apprehended, Treaſon.* The Parſon imagined, That the King had as great a *Supremacy* in Temporals, as in Spirituals; and ſaid, *That the Opinion of all* Orthodox Divines *was*, That the King had a Legal Power to **Impoſe** the *Tax* of Ship-Money; which fairly diſcovered (if Mr. *Harriſon* ſaid true) That the *Orthodox Clergy* were, at that Time, Well-wiſhers to an Intereſt, deſtructive to *Britiſh* Freedom, Liberty, and Property; whereas their Profeſſion, is to Expound the Scriptures, and not the Laws of *Britain*; and the rather, ſince their *Diſdaining*, to make the Books of that Science, any Part of their Study, or Reading, makes them, at the ſame Time, Strangers to the *Britannic Conſtitution*: But the Truth is, Their Preaching away Property, had miſled the Judges, and made them to lay aſide the Law, and to Judge That to be Law, which the Clergy Preached.

SECT. XXIV.

IT is probable, That theſe Provoking and Dangerous **Strokes**, at the Root and Foundation of the Conſtitution, Ripened the Reſolution of the *Britiſh* Patriots, either to **Diſturb** the new Aſſumed Power, and *Reſcue* the Fundamental **Form** of this Government, and the Freedom of *Britons*, from under the Oppreſſion of Arbitrary Miniſters, and Time-ſerving Judges, or to **Periſh** in the Attempt, as their Anceſtors, in the like Caſe, had done. Nothing, therefore, can better Illuſtrate this Dangerous **Breach**, by **Impoſing** this Tax of Ship-Money, than what the Noble Hiſtorian hath written on this Occaſion.

Vol. I. 69. And here I cannot but take the Liberty to ſay, *That whilſt Men apprehended the Buſineſs of Ship-Money, to be an* Impoſition

ſition *of State, by Orders of the Council-Board, under a Notion of* Neceſſity, *which ſome believed, and others thought of Importance to the King, and of little Damage to themſelves, and all aſſuring themſelves, that when they ſhould be weary, or unwilling to continue the Payment, they might reſort to the* **Law** *for Relief, and find it; they bore the Burthen with ſome Patience; but when they heard this Aid demanded, in a* Court of Law, *as a* **Right**, *and found it, by ſworn Judges of the Law, Adjudged ſo, upon ſuch Grounds and Reaſons, as every* **Stander-by**, *was able to ſwear was not Law, and inſtead of* Giving, *were required to pay, by a* Logick, *that left no Man any Thing, which he could call his own; they no more look'd on it, as the Caſe of one Man, Mr.* Hampden, *but the* **Caſe** *of the Nation, and as an* Impoſition *laid on them, not only by the King, but by his Judges, which they thought themſelves bound, in Conſcience, to the Publick Juſtice, not to* **ſubmit** *to, But to diſturb and remove it; for when they ſaw, that in a Court of Law (That* **Law** Vol. I. 70. *that gave them Title to, and Poſſeſſion of, all they had) Reaſon of State was urged, as Elements of Law;* Judges *ſhewing their Knowledge in Myſteries of State; Judgment of Law, grounded upon Matters of Fact, of which, there was neither Enquiry, nor Proof, nor any Tryal, would be admitted, between the Crown and the Subject, and no* Reaſon *given, for the Payment of the Ship-Money, demanded of Mr.* Hampden, *but what included the Eſtates of* All *the People of* England; *they had no Reaſon to hope, that Doctrine, or the Promoters of it, would be contain'd, within any Bounds.*

The Noble Hiſtorian proceeds thus; *And here the Damage* Vol. I. 72. *and Miſchief, cannot be expreſſed, that the Crown ſuſtained, by the deſerved Reproach and* **Infamy**, *that attended the* **Judges**, *by being made Uſe of, in This, and the like Acts of Arbitrary Power; There being no Poſſibility, to preſerve the Dignity, Reverence, and Eſtimation of the Laws themſelves, but by the Integrity and Innocency of the Judges; and no Queſtion, as the extraordinary Meaſures of the Houſe of Commons, in the next Parliament, proceeded principally from the Contempt of what was inſiſted on, or urged to them for Law, and that Contempt ſprung from the Scandal of that Judgment; ſo the Concurrence of the Houſe of Peers, in that Fury, can be imputed to no one Thing more, than to the Irreverence and Scorn, the Judges were juſtly in; for the Lords now thought themſelves excuſed, for ſwerving from the Rules and Cuſtoms of their Predeceſſors,* (who,

(who, in judging of Things and Perſons, had always obſerved the Advice and Judgment of thoſe Sages) *in not now asking Queſtions of* Thoſe, *whom they knew, no body would believe, thinking it a juſt Reproach upon them* (who, out of their Courtſhip, had ſubmitted the Grand Queſtions of Law, to be Meaſured, by the Standard of what, they called *General Reaſon*, and explained by the Wiſdom of State) *that they themſelves ſhould make Uſe of the Licence, which the others had taught, and determine that to be* Law, *which they thought to be* Reaſonable, *or found to be convenient; whereas if theſe Men, had preſerved the Simplicity of their Anceſtors, in ſeverely and ſtrictly defending the* Laws, *other Men had obſerved the Modeſty of theirs, in humbly and dutifully obeying them.*

Vol. I. 72. *Upon this Conſideration, it is very obſervable, That in the Wiſdom of former Times, when the Prerogative went Higheſt, never any Court of Law, ſeldom any Judge or Lawyer of Reputation* (except in the Reigns of *Richard* II. and King *James* II.) *was called upon, to aſſiſt in Acts of Arbitrary Power, it being of the greateſt Moment to keep* Thoſe, *the Objects of Reverence and Veneration; for the* Law *would keep the People from Invaſions on the Prerogative, and the King could never ſuffer, whilſt the* Law, *and the* Judges, *were look'd upon, as the Aſylum for their Liberties and Security: The Innovation therefore of this Judgment, for* Impoſing *this Tax of Ship-Money, and the Levying of it, made a laſting Sound in the Nation.*

SECT. XXV.

THE King's Miniſters, and eſpecially the *Junto*, or Cabinet-Council, of Three, Archbiſhop *Laud*, Earl of *Strafford*, and Duke *Hamilton* ſported themſelves, for a long Time, in Wanton Acts of Power; for their imperious Adminiſtration met with no forcible Oppoſition or Reſiſtance; no Inſurrections appeared; the Nobility and Gentry (having in View the terrible Power of the Star-Chamber, and the Examples of Sir *John Elliot*, *Prynne*, *Baſtwick* and *Burton*) behaved *paſſively*, expreſſing their Uneaſineſs, only in Murmurs, and thoſe the Miniſters contemned: The Modeſty of thoſe Times was ſuch, That the Hopes of the whole Body of the People, were placed, in a free Parliament, and no Redreſs was otherwiſe expected or attempted.

And

And it is to be obſerved, That the Exerciſe of Arbitrary Power, which grieves the People, uſually iſſues in theſe three ſpecifick Deprivations of Mens Felicities; either,

I. In Bloodſhed, by depriving Men of their Lives; or,

II. In Impriſonments, by depriving Men of their Liberties; or,

III. In Confiſcations, by depriving Men of their Properties, by Fines and Amerciaments, *&c.* which affect both the Lives and Liberties of all Men.

As to the Exerciſe of the firſt Part of Arbitrary Power, in Bloodſhed, there was no Species, of that Sort, practiſed in this Reign; except thoſe put to Death by Martial Law, which were many.

But as to the ſecond Species of Arbitrary Power; Numerous, and almoſt innumerable, were the Inſtances of Mens Sufferings, by illegal Impriſonments; which was a Cruelty next in Degree, to Bloodſhed. Baker, 441, 444.

As to the third Species of Arbitrary Power; touching Fines and Amerciaments, that Grievance became almoſt general.

And as to a Parliament, *The King* (as *Saunderſon* relates) *had learned to ſtand on his own Legs, having ſufficient Power by Land and Sea, without troubling thoſe Aſſemblies*; and therefore the Lords and Commons had nothing to oppoſe, but their Paſſive Obedience, and their Patience, in Waiting 'till ſome Foreign War, or other unforeſeen Occurrence, ſhould induce a Want and *Neceſſity* of Aſſiſtance, and then the Removal and Redreſs of their Sufferings, would, doubtleſs, antecede their Aſſiſtance; it being unnatural to ask, from Men enſlaved and oppreſſed, Help, to encreaſe the Weight of their own Burdens, and Vexations. Sanderſ. 285. 134. 299.

SECT. XXVI.

THUS lay the Conſtitution, for a long Time, proſtrate, and disjointed, and all Mens Properties and Freeholds in a Precarious *Uncertainty*, and the Nation, during Fifteen Years, *languiſhed*

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guiſhed almoſt in Deſpair of ever ſeeing a *free Parliament*: When an inconſiderable **Cloud**, not bigger than a Man's Hand, portending a Storm, far in the *North*, began to riſe among the Subjects of his Majeſty's antient and native Kingdom, whoſe *Conſtitution* was broken, and as crazy as that of *England*: And altho' the Effort was, at firſt contemned, yet from it, ſprung great Events.

The combuſtible Matter, which gave Riſe to this Tempeſt, cannot be repreſented without a View of ſome Steps of Power, made in the Reign preceding.

The Reformation in *Scotland*, from Popery, differed much from that of *England*; for whereas on the one Hand, the Reformation in *England*, was tender, and extended no further, than to reject what was abſolutely neceſſary to be rejected, reſerving (as the *Scots* alledged) as many of the Ceremonies, and as much of the Diſcipline, of the *Romiſh* Church, as was not *Idolatry*; but, on the other Hand, the Reformation in *Scotland* was faſhioned after the Example of *Calvin*, *i. e.* To remove as far from Popery, as the Matter would bear, rejecting and aboliſhing, all Reſemblances of the Ceremonies, Diſcipline, and Government of that Church, and particularly Epiſcopacy; for the Reformed Church of *Scotland*, and the Government thereof, in all Eccleſiaſtical Affairs, was, by the Legiſlative Authority, veſted in the Aſſemblies of Presbyters and Elders, who might, at their own Pleaſure, convene themſelves, and their Orders were to have the Force of Laws; but the Knig might, if he pleaſed, appoint a Commiſſioner to preſide, and repreſent his Majeſty's Perſon in thoſe Aſſemblies, and to give the Royal Aſſent, to thoſe Orders: This National Church was therefore denominated Presbytery.

This Manner of the Reformation in *Scotland*, being ſo eſtabliſhed, as the Conſtitution in the Church, and Religious Affairs; the ſame became engraven on the Minds of that Proteſtant Nation.

And in this Place, it may be remembred, That the *Scotiſh* Reformation, met with ſo much Difficulty from their Courtiers; that the Safety and Progreſs of the Reformed, made it neceſſary, in order to defend themſelves, and their Religion, and to oppoſe Popery, and all the Ceremonies and Diſcipline of the *Romiſh* Church,

Church, to enter into a National Covenant, in other Countries called an Aſſociation.

This Oppoſition, therefore, of Popery, became a Part of their Faith and Religion, and was, as an Inſeparable Ingredient, Interwoven in their very Reformation; the Conſequence whereof was, *That whatever ſhould be* Impoſed, *Reſembling the* Romiſh *Rites, looked like Unravelling their Proteſtant Conſtitution.*

Another Step made at the *Scotiſh* Reformation was, *That when Epiſcopacy was Aboliſhed, and the Monaſteries in* Scotland *Diſſolved, all the Impropriated Tythes and Church Lands, were Given to, and Veſted in, the Crown; and by the Crown, Part of them were Appointed, for the Presbyters and Miniſters Maintenance; and the Reſt were Granted to, and Cantoned amongſt the Laity*: Which made, That the Lords and Commons became more Powerful, after the Pattern of *England*.

King *James* I. of *England*, and VIth of *Scotland*, after his Acceſſion in 1603, to ſo potent a Government, as that of the *Engliſh* Nation, Apprehended, and accordingly found, That his Regal Influence in *Scotland*, would Increaſe, ſuitably to the Increaſe of his Power, by the Addition of *England*; and, accordingly, he Attempted, and Succeeded, in obtaining two extraordinary Acts in the *Scotiſh* Parliament; to wit, One Act in the Year 1606, whereby *ſome Prerogatives in Temporal Affairs, were given to the Crown*: And another Act in 1609, Impowering the King to *preſcribe Habits to the Clergy, when Divine Service was by them performed.*

King *James* having obtained theſe two Acts, which gave him ſuch additional Powers, imagined, That what *Innovations* he ſhould, by his ſupreme Prerogative, pleaſe to make in the Eccleſiaſtical Affairs of *Scotland*, ſuitable to the Mode of *England*, would be Supported by the Power of *England*; And, as an Inſtance of his Unlimited Power, he did, in the Year 1612, Reſtore and Introduce Epiſcopacy into that Kingdom, appointing Biſhops of the thirteen old Biſhopricks, which, at the Reformation, had been Aboliſhed; but the King wanted Means to Endow them with ſuitable Revenues, which made thoſe new Dignities appear, Naked and Titular.

This King, therefore, made two Attempts, in order to enable him to compaſs his Deſigns, *viz.*

I. *He endeavoured to Reſume the Tythes and Church Lands, and for that End, he paſſed under the Great Seal, a Patent of Revocation, to make* Void all the Grants made in his Minority: *He intended alſo to Create Titular Abbots, who, together with his new Biſhops, ſhould be Lords of Parliament for Life, as it was before the Reformation*; but this Attempt meeting with a ſtrenuous Oppoſition, was, at that Time, laid aſide.

II. The ſecond Attempt was this, *This King went down to* Scotland, *and there held a Parliament in the Year* 1617, *in which his Majeſty endeavoured to Conſolidate the two Acts of* 1606, *and* 1609, *with an Additional Clauſe, Authorizing*, That all Things which ſhould afterwards be determined in Eccleſiaſtical Affairs, by the King, with the Conſent of a Competent Number of the Clergy, ſhould have the Strength and Power of Laws; *but the King apprehending not only*, That great Oppoſition, to the Paſſing it, would be made; *but alſo*, That great Troubles would attend the Execution; *his Majeſty therefore ordered the Act* (*although it had paſſed the Lords of the Articles, whom he Influenced*) To be Suppreſſed.

SECT. XXVII.

IT is in this Place obſervable, That notwithſtanding the boaſted Freedom and Liberties of the *Scotiſh* Nation, the ſame were mixed with Three Weakneſſes, *viz.* One in the very Conſtitution itſelf, and the other Two, were made by the ſubſequent Laws, which preſſed down that People under Servitude.

Theſe Weakneſſes were as follow, *viz.*

I. By their Original Conſtitution, the King, Lords, and Commons, in Parliament Aſſembled, were all of them to Sit, and Debate, and Vote, and Enact, Laws, in one Houſe or Chamber, where the Preſence of the King's Perſon, Over-awed and Curbed the Freedom, not only of Speech and Debates, but of Voting for, and againſt, the Proceedings before them: By this Reſtraint, the Legiſlature was, in the firſt Concoction, Weakened,

Weakened, and the whole Political Body was, by an ill Digeſtion, like a Body Natural, Sickly and Infirm.

II. The Members of Parliament, whether Lords or Commons, were, by a Law made by themſelves, ſubſequent to their Original Conſtitution, in the Time of King *David Bruce*, Reſtrained from the Privilege of Propoſing, or Introducing any new Law, or any Law for Altering, Amending, or Reſcinding old ones, unleſs ſuch Law were firſt prepared and paſſed by a Committee of Parliament (commonly called the Lords of the Articles): In the Nomination of whom, the King had uſually a prevailing Influence. This was likewiſe a grievous Crippling of the Parliament, and made their Legiſlature Lame and Decrepid.

III. But the moſt Unaccountable of all the Laws in the World, was, That, in a Nation pretending to Freedom and Liberty, there ſhould be found (as there was in *Scotland*) a Law, that made it *High Treaſon* to ſpread Lyes of the King, or his Government (commonly called, *Leaſing-Making*) or to know of any that do it, and not diſcover them, without ſpecifying the Nature of thoſe Lyes: The Words of which Law, were ſo general, that no Man knew how to Speak, or Write, of the Adminiſtration, without being Involved within the Reach of this Law. Sanderſ. 254.

This Law, therefore, Infers, to the Minds of Strangers, great Doubts about the Liberties of *Scotland*, whether the *North Britons* were, before the Union, Freemen, or not; in Regard this Law Abrogates the Subjects *Right of Petitioning* the King, to Redreſs their Grievances; for no Man can Petition for Relief againſt a Grievance, without Deſcribing the Nature of that Grievance, and the Cauſe and Reaſon of it; becauſe a *Grievance* cannot properly be a Grievance, unleſs it proceed from ſome Illegal or Oppreſſive Act, or Male Adminiſtration of Government, done by the King himſelf, or by others Commiſſioned by him.

Now if that *Suggeſtion* in the Petition (although it were in Fact true) ſhould happen, by Partial Judges, or Juries, to be Voted a Leaſing Making, the poor Petitioner, inſtead of obtaining Juſtice, was to be Condemned and Executed, as a Traytor, Guilty of *High Treaſon*, only for Complaining.

This Law tyed down the Subject, under aſſured Slavery; for he was not only obliged to bear all manner of *Wrongs and Oppreſſions*, but reſtrained from praying to be delivered from them. *Miſera eſt Servitudo, ubi Jus vagum & incognitum* !

However, the beſt Account that can be given of the Abuſe of this Leaſing-Making Law, and other ſuch Laws in *Scotland*, is, *That there was a* **Native Spirit, Inherent and Moving**, *in the* Scots *Nation, which ſpeedily Cured and Prevented the Evil Conſequences; for although thoſe Laws have been made Uſe of, by Evil Stateſmen, Judges, and Juries, to bring ſome great Patriots, and their Families, into* Deſtruction, *yet, when all other Reaſons and Arguments, to obtain Juſtice, have failed, the* **Antient Vigour** *of the* Scotiſh *Nation, being Rouſed and Provoked, have done themſelves* Juſtice, *by Reſorting to a Sort of Military Juſtice, or Execution, in Cutting to Pieces ſuch Arbitrary Stateſmen, Judges, and Juries, and Burning their Houſes; and by thoſe Means, have obviated the General* **Servitude**.

SECT. XXVIII.

BUT to return; King *Charles* I. upon his Father's Demiſe, *viz.* On the 27th of *March*, 1625, Acceded to the Crown, and the *Scots* grew Impatient, at his Reigning in *England* above Seven Years, without being Crowned in *Scotland*, as if that Crown was not worth his coming ſo far, to be acquainted with his Antient and Native Subjects: Whereupon, the King reſolved to go into *Scotland* in *June*, 1633; But before his Journey, *Laud*, Biſhop of *London*, *&c.* poſſeſſed his Majeſty, with vaſt Notions of Glory, in Eſtabliſhing Epiſcopacy, *&c.* in *Scotland*; and that nothing could be more Illuſtrious, than to Revive and Effect the *two Undertakings*, which his Father had faintly Attempted, and weakly Relinquiſhed; to wit, 1. *The Gaining that Conſolidation Act, which his Father* (after the Paſſing it by the Lords of the Articles) *had Suppreſſed.* 2. *The Reſumption of the Tythes, and Church Lands, with which the Biſhops, Abbots,* &c. *might be Endowed.*

The

The King gave into theſe Meaſures, being ever delighted with Suggeſtions of *Domeſtick Greatneſs*; and in *Scotland*, he called a Parliament, which met on the 20th of *June* 1633. and ſate only eight Days: At this Parliament, the Act before mentioned, for conſolidating the ſaid two Acts of 1606, and 1609. with the ſaid Additional Clauſe, making the King, in Church Affairs, in effect abſolute, paſſed the Lords of the Articles; but when it came into Parliament, where the King, in Perſon, *diligently attended*, it met with great Oppoſition, inſomuch, that the King ſitting on the Throne in Parliament, took out a Liſt of all the Lords and Commons there Aſſembled, and ſaid, *Gentlemen, I have all your Names here, and I'll know, who will do me Service, and who will not, this Day.* Such an Invaſion of the Freedom of Parliament, was never before heard of! notwithſtanding which, the Earl of *Rothes*, and Lord *Lowdon*, and others, moved and argued, *That the Acts might be ſeparated, and not tacked*; but the King ſitting upon the Throne in Parliament, ſaid, *It was now one Act, and they muſt either vote for it or againſt it*: The Earl replied, *That the Clergy ought either to give their Conſent, or be heard what they had to ſay, relating to it*; the King bid him argue no more, but give his Vote, ſo he voted, *Not Content*: Other Lords, thirteen in all, offered to argue, but the King ſtopp'd them, and required them to vote, which they did, *Not Content*: Almoſt the whole Commons voted in the Negative; ſo that the Act was indeed rejected by the Majority, which the King knew; for he had, in his Hand, a Liſt of all the Members, and had, with his own Hand, marked every Man's Vote; yet the Clerk of the Parliament, whoſe Office it was to gather and declare the Votes, ſaid and alledged, *That it was carried in the Affirmative*: The Earl of *Rothes* affirmed, *That it went for the Negative*; but the King ſaid, *The Declaration of the Clerk muſt be* held good, *unleſs the Earl would go to the Bar, and accuſe the Clerk of falſifying the Record of Parliament*; which was, in the Clerk, an Offence Capital; and, in that Caſe, if the Earl ſhould fail in the Proof, he (the Earl) was to be liable to the ſame Puniſhment, *Pœnam Talionis*; ſo the Earl declined to venture, on that Hazard; and in this Manner, the Act was paſſed, though, in Truth, it was rejected.

Echard 453. Sanderſ. 194. BURTON. Sanderſ. 256.

The King expreſſed a *High Diſpleaſure* at all thoſe, who had concurred in that Oppoſition.

This

This Manner of treating, the tendereſt Part of the People's Rights, being done in the moſt ſolemn Seat of Juſtice, and in the **Face** of the Parliament, in which the whole Nation was virtually collected; appeared ſo bold and avowed, That the Lords and Commons, did from thence conclude, *That all their Liberties were* **Subverted**; for a Parliament was but a Piece of Pageantry, if the Clerk might declare as he pleaſed, how the Vote went, and no Scrutiny was to be allowed.

SECT. XXIX.

SOON after, the King left the *Scots*, as much diſcontented, at this unequal Return for their Dutiful Affections, as impoveriſhed by their Vying with the *Engliſh*, in expenſive Equipage and Entertainments, to teſtify thoſe Affections.

But the King having ſucceeded in the Attempt, which his Father could not effect, was much *Elated*, and reſolved to proſecute his Deſign of Recovering the Church-Lands, and Sir *Thomas Hope* was made the King's Advocate, upon his Undertaking to bring all thoſe Lands back to the Crown.

And this Reſolution was made no Secret, but was revived, notwithſtanding the King had before, in the Year 1628. and before Matters were fully ripened, made a fruitleſs Eſſay, towards that Reſumption: The Manner of which, had been thus tranſacted.

The King had ſent down the Earl of *Nithiſdale*, with a Commiſſion, by which he and others were impowered, to take Surrrenders with great Kindneſs, and threatning to proceed with Rigour, againſt all thoſe, who ſhould not ſubmit their Rights therein to his Diſpoſal; but the Owners of thoſe Lands did, in a Body, armed with Piſtols and Whinyards, meet the Commiſſioners at *Edinburgh*, having firſt reſolved, *That if no Arguments could prevail with them to deſiſt, they would, in Defence of their Properties, do Military Juſtice, after the Antient* Scotiſh *Faſhion, by cutting the Commiſſioners, and their Party in Pieces*; which being whiſpered, the Earl of *Nithiſdale* cloſed his Inſtructions, and retired to *London*, looking on the Service as deſperate.

SECT.

SECT. XXX.

THE Lord *Balmerino*, ſoon after the King's Departure from *Scotland*, fell under the Laſh of the *Leaſing-Making-Law*; the Manner was thus: One *Hague*, the King's Sollicitor-General in *Scotland*, being diſſatisfied with the Manner of obtaining the Act of Parliament, drew up an Humble Petition, to be ſigned by the Lords and Commons, and preſented to the King, in which was ſtated their Grievances, and the Cauſes of them, and praying Redreſs, and delivered it to the Lord *Balmerino*, who kept a Copy of it, and made ſome Alterations therein, by Way of mollifying ſome Expreſſions: The Lord *Balmerino* truſted one *Dunmore*, a Lawyer, his Counſel, with the ſaid Copy, to peruſe and amend: He ſhewed it to one *Hay*, who run away with it to Archbiſhop *Spotſwood*, and the Archbiſhop was in ſo much Haſte, to carry it to the King in *London*, that he began his Journey on a *Sunday*.

Hague fled to *Holland*, and a Commiſſion came down to try Lord *Balmerino* for High Treaſon, in *Leaſing-Making*; The Court, upon the Tryal, adjudged, *That the Suggeſtions in the Petition, touching the Grievances complained of, were Lyes, or* Leaſing (Oh Nefarious Wickedneſs! to declare, *that a Grievance, ſtated in a Petition, in Order to be relieved from it, High Treaſon*); but in regard there was no Proof, That the Lord *Balmerino* was the Author; for his Interlineations, had ſoftened and mitigated the Force of the Allegations; the Proſecutors were therefore forced to reſort to the other Part of the *Leaſing-Making Law*, viz. *That the Priſoner, knowing the Author, had not diſcovered him*; the Jury, conſiſting of Fifteen, whereof the Majority, might acquit or convict; Seven acquitted him, and Eight, whereof Earl *Traquair* was one, convicted him; *viz. That the Priſoner had not diſcovered the Contriver of the Petition*; and ſo he was, by the Judgment of the Court, Attainted of High Treaſon, and ordered to be executed: But the Lord *Balmerino* was ſaved and pardoned, by Reaſon the *Scots* in general, had aſſociated, to execute *Military Juſtice*, after the old *Scotiſh* Faſhion, by *cutting in Pieces* the Judges, and the Eight Jurors, and by burning their Houſes, in Caſe *Balmerino* were executed.

SECT. XXXI.

THE King, by the Advice of Biſhop *Laud*, gave publick Orders, (at his leaving *Scotland*) to the New Biſhops there, to draw up and prepare, a Liturgy or Common-Prayer, and alſo Canons, to obſerve and uſe that Liturgy, and other Ceremonies in *Scotland*, and that the ſame ſhould be remitted to *England*, and there reviſed and approved by three *Engliſh* Biſhops, *Laud*, *Juxon*, and *Wren*; and, after that, to be, by his Majeſty's Royal Authority, ratified and confirmed.

The Drawing up and preparing this Liturgy or Common-Prayer, and the Canons to obſerve it, took up the Space of three Years, and then, very prepoſterouſly, the Canons were publiſhed near one Year, before the Liturgy (which, by thoſe Canons, was commanded to be obſerved) appeared.

The Canons contained Matters ſo ſurprizing, and Arbitrary, That the Fire and Rage of Diſtruſt and Jealouſy was kindled, as if Popery was to be introduced, and *Scotland* made a Province ſubordinate to *England*.

Some of thoſe Canons were as follow;

The whole Syſtem was *introduced* and *founded*, on a Definition of the King's Powers and Prerogatives, Aſſerting the ſame to be in every Thing equal, to thoſe of the *Jewiſh* Kings; meaning, *That they are Abſolute and Unlimited.*

That no Eccleſiaſtical Perſon, ſhould become Surety, or bound for any Man.

That no Aſſembly of the Clergy ſhould be called, but by the King only.

That every Eccleſiaſtical Perſon, dying without Children, ſhould give a good Part of his Eſtate to the Church, and for the Advancement of Learning.

That the Clergy ſhould have no private Meetings, for expounding the Scripture.

That

That no Clergyman ſhould Conceive Prayers, extempore, *but be obliged to pray only, by the printed Form, preſcribed in the Book of Common Prayer.*

That no Man ſhould teach School, either publickly, or in any private Houſe, without a Licenſe from the Biſhop of the Dioceſs.

That no Excommunication ſhould be pronounced, or Abſolution given, but by the Approbation of the Biſhop.

That no Presbyter ſhould Reveal any thing, he ſhould Receive in Confeſſion, except his own Life ſhould, by the Concealment, be forfeited.

That no Perſon ſhould be admitted to Holy Orders, or to Preach, or to Adminiſter the Sacraments, without firſt Subſcribing to theſe Canons.

Theſe Canons did, as the People apprehended, Affect and Alter the Temporal Part, equally with the Eccleſiaſtical Part of the Government, and poſſeſſed the whole Body of the Nation (the Biſhops, and a handful of Men of their Party, only excepted) That none of their Rights, were Exempted from this Invaſion; and eſpecially, That their National Church Presbytery, by Law Eſtabliſhed, was to be wholly Extirpated, and in its Room, a Foreign Epiſcopacy, illegally Introduced and Impoſed.

SECT. XXXII.

IN this Place, a proper *Pauſe* may Intervene, to Inquire, what Profit or Advantage the King's Miniſters had in View, either to themſelves, or to the Crown, in Forming and Carrying on theſe Undertakings, which they knew to be, in *Scotland*, an Abomination; for it may be demanded, of what Signification was it to the Crown, whether the National Church of *Scotland*, were a Presbytery, or Epiſcopacy?

The Problem is difficult to Reſolve, any other Way, than that it was the Exerciſe of a Power, which deſpiſed all Limitations, and all Imaginations of a Diſappointment.

When

When the Book of Common Prayer came to be Read, on the Twenty-third Day of *July*, 1637, in the principal Church, called St. *Giles*, in *Edinburgh*, after the Manner uſed in Cathedrals, the Method appeared to the *Scots* (as they alledged) an Exceſs of Levity; and thereupon the Power, by which that Liturgy, and the Canons to obſerve it, were *Impoſed*, was, as well by the Noble, as the Plebeian Women (aſſiſted by the Mob, or Rabble) Oppoſed and *Diſturbed*; inſomuch, that the Biſhops, and the Readers, were (as if they were endeavouring to Introduce Popery) Treated and Hooted at, as common *Enemies*; and that which made the Clamour, and the *Scots* Fears, more Outragious, was, For that the King, in that very Year, 1633, in which he had given Orders, for the Framing and Impoſing this Liturgy and Canons, had publiſhed in *England*, the Book for Licenſing Sports, on Sabbath Days, which the *Scots* looked on, as ſuch an Irreligious Profanation, as could be Patronized by Nothing, Inferior to Popery.

Sanderſ. 175. Echard 455.

After the Women and Mob had thus begun the Diſturbance, the Men, both Nobles and Commons, appeared; and Declaring their Religious and Civil Liberties and Privileges, to be Invaded and Subverted, they undertook their Defence, and to *Reſcue* their Nation from under Arbitrary Power: And for this End, they appointed diſtinct Tables, or Boards of Council; one for the Nobility, another for the Clergy, another for the Gentry and Freeholders, and another for the Burgeſſes; all which concurring in the ſame Sentiments, they Aſſumed the Government, Seized the King's Caſtles, and Forts, and ſought for Foreign Aſſiſtance, and acted in every thing like Men of Reſolution.

Echard 466. Sanderſ. 233.

The *Scots*, in Relation to the Common Prayer Book, argued, *That Prayer was the moſt ſolemn Part of Divine Worſhip; That it was the Principal Acknowledgment of God's being the Great Creator, and the Fountain of Power, Wiſdom, and Goodneſs; That he is the Diſpoſer of all Men, and of all Events; and that there is no other* Being, *to whom Prayers ought to be made, for what is either wanted, or deſired; and therefore the ſame ought, with great Solemnity and Seriouſneſs, to be performed: That the Common Prayer, as it was made in the Cathedral Manner, was attended with an Indifference, unſuitable to the Seriouſneſs and Zeal*, they inſiſted, *ought to be, in Divine Worſhip, Indiſpenſible.*

In

In this Manner were the Common Prayer and Ceremonies, by the *Scotiſh* Clergy depreciated, and enough was done, to Alarm the Poſſeſſors of Church Lands, who did not fail to Infuſe into the whole People, and chiefly into the Preachers, a Belief, *That all theſe Steps were taken to make Way for Popery*, and eſpecially, *That the Wreſting from them the Church Lands, could mean nothing leſs, than to provide for Popiſh Biſhops, and Abbots, Revenues ſufficient to maintain, their Temporal Pomp and Magnificence.*

SECT. XXXIII.

THIS was the Conjuncture, which thoſe *Engliſh* Noblemen and Gentlemen, who Groaned under the Arbitrary Grievances, of Ship-Money, Tonnage and Poundage (now called Cuſtoms) Monopolies, *&c.* but moſt of all, under the Cauſe of all Grievances; to wit, *The Laying Aſide Parliaments, and the Prerogative lately Aſſumed, to* **Impoſe** *Taxes, and Levy Money, by one of the Three Eſtates, without the Concurrence of the other Two*: I ſay, **This** *was the Opportunity, that theſe Gentlemen took, privately to* **Invite** *and* **Sollicite** *the* Scots, *to Raiſe an Army, and Invade* England, *promiſing, Not only to Raiſe Forces, and Join and Aſſiſt, but to pay the* Scotiſh *Army, provided they would refuſe any Treaty, but what ſhould be confirmed by a Parliament of* England. Sanderſ. 194.

For the *Engliſh* rightly Judged, and Inſtructed the *Scots*, That any **War** would ſoon Reduce the King to the Want of **Aſſiſtance**, and ſuch Want, would *Neceſſitate* him to Aſſemble a Parliament, and a Parliament would find Means, to Queſtion, and Remove, and Puniſh, thoſe Miniſters, from whom the Grievances and Oppreſſions of both Nations, proceeded; And, moreover, would pay the *Scots* their Charges, and Reſtore them to their Rights and Freedom: This was the Propoſition or Principle, which was Infuſed into the *Scotiſh* Leaders ſucceſsfully.

Now, ſince this **Invitation** was the ſecret Spring, that gave Motion to all the future Proceedings, ſome Account of it, in this Place, may be proper, for the Underſtanding what follows.

It was framed after the Manner of an Engagement, and was Signed by the Earls of *Eſſex*, *Warwick*, *Bedford*, *Clare*, *Bolingbroke*, *Mulgrave*, and *Holland*; and by the Lords *Say*, *Brook*, *Kimbolton*, and *Savile*; and by many Leading Commoners: And becauſe the Lord *Savile* bitterly hated the Earl of *Strafford*, becauſe he (as Preſident of the *North*) had borne down *Savile*, and his Father, He was truſted with the Original Engagement, to be conveyed to *Scotland*: But *Savile* firſt took a Copy (moſt probably, in his own Hand-writing) of the Engagement, and of the Names of all thoſe that ſubſcribed it; after which, Baker, 472. a Cane was hollowed, and the Original Paper put within it, and one Mr. *Froſt* was ſent, as a poor Traveller, to deliver it. BURNET. It was to be communicated only, to three Perſons, the Earls of *Rothes*, and *Argyle*, and to *Archibald Johnſton*, Laird of *Wariſtoun*, the three Chief Confidents of the Covenanters, upon their Oath of Secrecy; but it was to be depoſited, and was ſo, in *Wariſtoun*'s Hands; and they were only allowed to publiſh to the *Scots*, *That they were ſure of a very great and unexpected Aſſiſtance, which, though it was to be kept very ſecret, would appear in due Time*: And here we may Leave it, to ſurvey the various Branches of that amazing Tree, which this Root, or Seed, Emitted and Nouriſhed.

SECT. XXXIV.

THE *Scots* Nation being thus ſecretly **Invited** and Encouraged, Embraced the Overture, and by Artifices and Amuſements, gained Nine Months Time, to Marſhal themſelves into a Military Poſture, and to provide Officers, Arms, and Ammunition, to be Employed in the *Undertaking*, which aimed not at any Damage to the King's Perſon, or Government, but to Reduce his Adminiſtration, within the Bounds of the Conſtitution, in each Kingdom.

When an Account came to *London*, of the Proceedings in *Scotland*, the King laid them before his Cabinet Council, or *Junto*, to conſider, whether the Diſobedience and **Diſturbance**, which the *Scots* gave to his Majeſty's Royal Edicts, relating to the Canons and Common Prayer Book, were a **juſt Cauſe** for the King, to uſe the Power and Forces of *England*, to make **War** upon his People of *Scotland*, conſidering that the Numbers

Numbers adhering to the Presbytery, in that Church, and who refuſed to ſubmit to thoſe *Innovations*, were the general Body of the People (the Epiſcopalians, whom they oppoſed, being but a Handful of Men, bearing with the others) no Proportion: But his Majeſty's Imperious Miniſters, ſoon reſolved in the Affirmative, not Conſidering what might enſue, upon the provoking a People ſo Warlike and Tenacious, as were the *Scots*.

SECT. XXXV.

AT this Time, the Exchequer, partly by the Ship-Money, and partly by Tonnage and Poundage, and by other ſuch-like Ways and Means, was pretty well furniſhed. Clarendon. Vol. I. 113.

The King, therefore, in the latter End of the Year 1638. raiſed an *Engliſh* Army, conſiſting of about 16000 Foot, and 5000 Horſe, well appointed, beſides a ſtrong Fleet, well Mann'd and Victualled, all which, for the Reaſons given by Lord *Clarendon*, was ſoon compaſſed; and in *May* 1639. the King encamped on the *Engliſh* Side of the *Tweed*, near *Berwick*; the *Scots* Army of Aſſociators (which was much inferior) being but about 12000 Foot, and 2000 Horſe (called in Contempt *Naggs*) encamped at *Dunſlow*, and after at *Kelſo* in *Scotland*, within View of the *Engliſh* Army.

This Diſproportion in the Armies, ſhewed the *Engliſh* **Inviters**, That this was not an Opportunity for the *Scots* to preſs the Point aim'd at, (to wit) *the Aſſembling an* Engliſh Parliament; **Means**, therefore, were found, to draw Matters to a Treaty, it being repreſented to the King, *That it was an unnatural Thing, for his Majeſty, to make* **War** *upon his own People of* Scotland, *merely for endeavouring to be delivered from the Innovations of the Common-Prayer-Book and the Canons; the ſame being, in Reality, a Matter of Difference in Religious Forms, not material enough to be purſued with Bloodſhed.*

The *Scots*, at the ſame Time, ſent humble Repreſentations to the King, profeſſing great *Deference* to his Royal Perſon, and requeſting, *No more than a Redreſs of their Grievances*, and propoſing a Treaty for that Purpoſe.

This

This Treaty ended in a Pacification dated the 17th of *June* 1639. which was to continue for 20 Years.

By which, both Armies were to be Disbanded.

An Act of Oblivion paſſed;

The King's Caſtles and Forts Reſtored;

And an Aſſembly, and Parliament Called, to make a full Settlement.

SECT. XXXVI.

Clarendon, Vol. I. 68.

THE King forthwith Disbanded his Army, but not with ſuch obliging Circumſtances, as were like to incline them, to come willingly together again, if Occaſion ſhould call for their Service.

The *Scots*, on the other Side, retired, in ſuch a Manner, to *Edinburgh*, as looked like *Disbanding*; But having, by this Expedition and Pacification, gotten great *Reputation* both at Home and Abroad, in regard, it appeared now, what they could do; but, above all, having ſtrengthened their Correſpondence, with the Diſcontented *Engliſh* Nobility and Gentry, They (the *Scots*) reſolved to gain the *Grand Point*, in forcing the Aſſembling a *Free Parliament in* England, which they knew would remove thoſe Imperious Miniſters and Meaſures, which grieved both Nations; and, for that End, they retained in Pay, their beſt Men, invited Home, from Foreign Armies, experienced *Scotiſh* Officers, impoſed and raiſed Taxes, and did every Thing that was neceſſary, to weaken the King, and to make themſelves ſtrong, for another Expedition into *England*: And, in order to thoſe Ends, they printed an Account of the Pacification, which Repreſented Matters ſo diſhonourably, that the King cauſed the Paper to be burnt in *England*, by the Hands of the Common Hangman.

Theſe Provocations induced the King, with his *Junto*, or Cabinet-Council, to conſider of this Situation of Affairs, and how to retrieve the Honour he loſt by the Pacification, and to reduce the *Scots* to Abſolute Obedience: The Reaſonings and Reſolu-

Reſolutions upon this Conjuncture, were, Firſt, *That at any Rate, the King's Authority muſt be Vindicated, and Reſcued from Contempt, the* **Life** *of Government being Reputation*; I ſay, theſe Reaſonings, *&c.* are excellently ſtated in *Sanderſon, p.* 257, to 266.

SECT. XXXVII.

WHEN all Circumſtances were laid together, it appeared, That 300,000 *l.* had been Amaſſed; and, in a great Meaſure, Diſſipated, in the laſt Summer's Expedition, by which, not only the *Exchequer* had been Drained, but ſeveral Branches of the Revenue (by borrowing thereon) had been Anticipated, and therefore no Means to undertake a **War**, either *Defenſive or Offenſive*, appeared Feazible (although the Danger was infinitely, more imminent, and the *Neceſſity* more preſſing, than in the Caſe of *Ship-Money*) except only the Means of Calling a Parliament, from which, *Aſſiſtance* might, from the Nation's ready Compliance, in raiſing the laſt Army, be reaſonably expected.

The Miniſters (*Laud* and *Strafford*) concurred in that Counſel, and when the Reſolution was made publick, and greatly applauded, *Strafford* appropriated to himſelf the Honour of promoting it; but the Imaginations, *That an* Engliſh *Parliament would give* Supplies *to make* **War**, *on the* Scots, *to tye them down under the Arbitrary Power they complained of; and at the ſame Time, eſtabliſh thoſe* **Powers**, *which oppreſſed* England, *by Ship-Money, Loans, Knighthood, Impriſonments*, &c. were the ſtrangeſt that ever entred into the Heads of any King's Counſellors. Dec. 5. 1639. Sanderſ. 285. Clarendon, Vol. I. 130.

And yet the Miniſters Diſdaining, what a Parliament would, or could do, abated nothing of their ſtately Paces; but proceeded with the ſame *Severity*, in levying Ship-Money, and in other Rigorous Uſage of the People, as if this Parliament were convened, not from any Motive of *Neceſſity*, but by his Majeſty's mere Grace and Condeſcenſion. Clarendon, Vol. I. 131. Each. 476.

But from the *Sequel*, it will appear, That this Reſolution, was built upon ſome Secret Reſources, which would enable the King to ſubjugate the *Scots*, notwithſtanding any Parliamentary Diſappointment.

SECT. XXXVIII.

IN the Interval between this Reſolution, to call a Parliament, and the Meeting of it; this notable *Diſcovery* was made, That when the King was Raiſing great Forces, and preparing a great Fleet to *Invade* Scotland by Sea and Land, and had, about *May* 1639. publiſhed his *Manifeſto*, and had proclaimed the whole *Scotiſh* Nation, upon the Matter, to be **Rebels**, the *Scots* did, in that Conſternation, attempt their laſt Effort, by reſolving to ſend a Letter to the *French* King, which was adviſed and compoſed by *Montroſe*, tranſcribed by *Lowdon*, and ſigned by *Rothes*, *Montroſe*, *Leſly*, *Mar*, *Montgomery*, *Lowdon*, and *Forreſter*: By which Letter, the *Scots Addreſſed* to the *French* King, *as to a Sanctuary for afflicted States; Praying the wonted Aſſiſtance, which that Crown had always afforded to their Nation.*

Clarendon, Vol. I. 72.
Sanderſ. 254.
Ruſhworth, Part II. 956.

This Letter being Intercepted, by the Lord *Traquair*, and by him Delivered up to the King, his Majeſty was extremely troubled, and objected to the *Scots*, the Indignity as inſufferable; but the *Scots* boldly Avowed the Letter, *as a National Act, in which, all Men* (without Exception) *were involved*; Arguing, *That when a People are diſtreſſed by Sea and Land, it is allowed, by the Laws of God and Man, to call for Help from God and Man*; and upbraidingly recriminated, *That a Letter lately ſent, even to the Pope himſelf* (*containing Matter utterly unjuſtifiable*) *was not hid from the World*: The Reproach whereof was, in thoſe Times, plainly underſtood; however, the King did not Queſtion, but that ſuch a Correſpondence with a Foreign Potentate, and more particularly with *France*, would appear, in the Parliament, to be a Crime, of the blackeſt Complexion.

Sanderſ. 256.

SECT. XXXIX.

THE fourth Parliament of this Reign, was, after twelve Years Receſs, opened on the 13th of *April* 1640, in which, the King laid before both Houſes, in the moſt heinous Manner, the *Scots* whole Behaviour; (to wit) *Their Diſobedience to his Edict osr Laws, impoſing on them the Laudable Rules, Relating*

ard 427.

ting to the Liturgy and Canons ; their Reſiſtance of his Regal Authority ; their Breaches of the late Pacification ; their Raiſing Armed Forces, and Money to pay them ; their Offer, by a Letter directed to the French *King, to reject his Majeſty's Government, and put themſelves under the* French *King's Protection* ; and for that Purpoſe, the Letter it ſelf was laid before the Parliament ; to which was *Added*, the *Scots* Threatenings, to invade *England* ; His Majeſty Declared Theſe, *to be the Cauſes of his convening this Parliament, and of his Deſire to be again Acquainted with them* ; and, therefore, his Majeſty *Demanded, ſpeedy Supplies, to* make War *upon the* Scots, *to vindicate his own Honour, and compel their Obedience*, &c. Intimating to them, *That he did not expect their Advice, much leſs, that they ſhould interpoſe in any Office of Mediation ; but that they ſhould ſpeed the* Supplies, *which the Progreſs of the Rebels called for, without Delay.*

The Manner and Matter of Convening, this Parliament, *Afforded* a large Field for Debate, and ſhewed the Commons the plain Difference, of Demanding Supplies in a Legal, and in an Illegal Method ; it repreſented, the Diſtinction between *real* and *pretended Neceſſities*, and a View of their Cauſes and Effects.

As to the Demand of Supplies, in an Illegal Method, the Inſtance of the Ship-Money, ſhewed, That when the King, by the Ship-Writs, commanded the Sheriff, to levy upon Mr. *Hampden*, a Sum of Money, the Cauſe, ſuggeſted in the Writ, was, *for that the Kingdom was in* Danger, *and that there was a* Neceſſity, *to prevent that Danger* ; but that *Danger and Neceſſity*, was wrapp'd up in a Cloud, which no Body, beſides the King's Miniſters, could penetrate, or could ſee, or diſcern, either what the Danger was, or from whom, or from, whence it did ariſe ; or, whether it was a *Great* or *Little*, or a Remote or Near *Danger*, nor what Proportion of *Means*, were neceſſary to prevent it ; and yet Mr. *Hampden* was *denied* Liberty, to Traverſe, or Try the Truth of that ſuppoſed *Danger*, or the *Neceſſity* to prevent it ; for the King's Suggeſtion was *Adjudged* to be concluſive, and he, Mr. *Hampden*, was told, it did not lie in his Mouth, to contradict the Royal Averment.

But

But now, when the King came to Demand Supplies, in a Legal Parliamentary Way, to enable him to *make War*, to prevent a ſuppoſed Danger, his Majeſty was obliged to open and declare the *Nature* of that Danger, the Perſons from whom it did ariſe, and the *Cauſes* which *produced* it.

The Scene being thus opened, it was generally underſtood, and privately argued, *That his Majeſty, by the Aſſiſtance of Evil Miniſters, had* (in *Scotland*) *aſſumed a Legiſlative Prerogative, and, under Pretext thereof, had made Arbitrary Edicts, or Innovations, by which he had extirpated the National Preſbytery, introduced and eſtabliſhed Epiſcopacy, and impoſed a Liturgy and Canons upon the Clergy,* **without** *the Concurrence of the Eſtates of that Kingdom, in Parliament Aſſembled*; and had inſiſted, *That theſe Prerogative-Inſtitutions* (although contrary to their Conſtitution) *ought to be complied with, by the* Scots *Obedience.*

The *Scots* had argued, *That theſe Edicts* (being Illegal) *ought not to be Obeyed*; inſiſting, *That if the King had ſuch a Legiſlative Prerogative, as was* Authoritative, *and Irreſiſtible, he might, with equal Authority,* (if his Mind had inclined him) *Aboliſh Proteſtancy, and Reſtore, and Impoſe the Antient Popery, and even Idolatry*; *and that all their Laws, ſecuring the Liberty of their Perſons, and their Temporal Properties muſt neceſſarily fall before the Strength of ſuch an unlimited* Supremacy; and, conſequently, *That the* Scots *were become* Slaves; for that Slavery and Arbitrary Power were correlative, it being impoſſible, that there can be *Arbitrary* Power in the King, without *Slavery* in the Subject; nor *Slavery* in the Subject, without *Arbitrary* Power in the King, the one being the Root, and the other the Fruit.

It was privately debated, *That if the* Scots *were not* **Slaves**, *then what they did, for the Recovery of their Liberty, was not Illegal*; *And if what they ſo did, was no Wrong, then a* **War** *made upon them, with* Engliſh *Forces, was to Subdue them, and Compel 'em, to ſubmit as* Slaves, *to what was Illegal, and as ſuch, Unjuſt, and could End in Nothing, but Supporting that Illegal, Unlimited* **Power**, *which equally Preſſed* England.

That

That ſuch a **War** was, in Effect, to Impoſe a Law, *That a Man ſhould not* **Defend** *his Perſon, againſt Wounds and Impriſonment; or his Property, againſt Depredations, or the Laws, or Conſtitutions of his Country, againſt ſuch, as would Illegally ſubvert them* All, which would, in any Man's own Caſe, appear Monſtrous.

It was, moreover, privately urged, *That the King had no more* Right, *to uſe the Forces of* England, being a Foreign Kingdom, *to make* War *upon his* Scots *Subjects, and to Subvert their Fundamentals, than he had, to Call in* French *Armies, to* make War, *upon the* Engliſh *People, to Enſlave them, by Supporting with thoſe Forces, his Prerogative-Impoſitions of the Taxes of* Ship-Money, Tonnage and Poundage, *&c.*

And as to the *Scots* Letter, to the *French* King, the Turn which the *Scots* gave it, took off all Impreſſion, and ſo it fell to the Ground, and was never more ſpoken of.

From theſe Premiſes, the Concluſion was evident, that a **War** upon the *Scots*, to Support ſuch a *Prerogative*, as Enſlaved them, was Unjuſt; and if ſo, the *Neceſſity* of Supplies, to Raiſe an Army, Vaniſhed.

It was Argued, *That the King needed no Forces, for he had all the Power, to obviate the War, in himſelf; for if he would pleaſe to Revoke his own Edicts, and Declare them Illegal, and would* **Diſclaim** *the pretended Prerogative, by which they were made, and make the Puniſhment of the Adviſers, Exemplary, it would remove the* Cauſe, *and then the* War, *which was the* Effect, *would, for want of Fewel, Die and be Extinguiſh'd.*

SECT. XL.

AFTER the Parliament had ſate about ſeven Days, and made no Steps towards granting the *Supplies*, the Court grew Uneaſy; whereupon there paſſed an extraordinary Occurrence, in which the Conſtitution, as to Excluding the King, and the Lords, from meddling in the Commons Proceedings, about giving Money, was Cleared and Vindicated; for the King finding the Commons bent upon the Grievances, and Poſtponing the

Clarendon, Vol. I. 134.

Supply, his Majeſty went to the Houſe of Lords, and, in a Speech, Repreſented to the Peers only, the Urgency of his Occaſions, in Relation to the *Scots*, and prevailed with them, to demand a Conference with the Commons, and there, to propoſe to them, by Way of Advice, *That they would begin with* giving *the King a* Supply, *in Regard the* Neceſſity *of his Affairs, required Speed and Expedition, and afterwards to proceed upon the Grievances*; With which the Lords Complied, and, at a Conference, gave that Advice to the Commons.

But, by this Intermeddling of the Lords, the whole Temper of the Commons was *Shaken*; foraſmuch as they inſiſted, *That by the undoubted* Fundamental Right *of the Commons in Parliament, all* Supplies *ought to have their Riſe and Progreſs, and whole Modelling in their Houſe*; *and that that Right had never before, been Infringed or Violated, or ſo much as Queſtion'd, by the Lords, or any of their Anceſtors.*

The Commons Argued, *That ſince the Antient Uſage of the Judicature, by the Lords, had ſilenced all Diſputes, about their Right, ſhould not the like Uſage, of Giving and Granting Money, by the Commons, ſilence all Diſputes, about their Right?* And as to the Queſtion, *Where is the Record, or Contract to be found, by which the Lords ever agreed to appropriate that Right to the Commons, in Excluſion of themſelves?* The Commons Anſwered with another Queſtion, *Where is that Record, or Contract, to be found, by which the Commons ever ſubmitted, that the Judicature, ſhould be appropriated to the Lords, in Excluſion of themſelves? Produce the one* (ſaid the Commons) *and we will ſhew the other, Indorſed on the Back of the ſame Roll.*

The Commons alſo Inſiſted, *That Money Bills, after they had paſſed their Houſe, and were Conſented to by the Lords, ought to be Re-delivered back to the Commons, and, by their Speaker, preſented to the King, as their free Gift and Donation.*

But the King imagined another Expedient, to ſurmount theſe Difficulties, and for that Purpoſe, ſent a Meſſage in Writing, by Sir *Henry Vane*, his Secretary of State, and Treaſurer of the Houſhold; wherein his Majeſty took Notice, *That there was ſome* Difference, *between the two Houſes, which had Retarded*

(as

(as his Majeſty ſaid) *the Tranſaction of the great Affairs of the Kingdom, at a Time, when a Foreign Army* (meaning his own Subjects, the *Scots*) *was ready to Invade it.* Clarendon, Vol. I. 135.

That his Majeſty heard, the Payment of the **Ship-Money**, notwithſtanding it had been **Adjudged his Right**, was not willingly ſubmitted to, by the **People**; therefore, to manifeſt his good Affection to his Subjects in general, his Majeſty made this Propoſition, *That if the Parliament would grant him twelve Subſidies, to be paid in three Years, by Inſtalments, his Majeſty would then* **Releaſe**, *all his Title and Power, to Impoſe Taxes by Ship-Money, for the future.*

My Lord *Clarendon* admits, That the Commons might juſtly have taken new Exceptions, in Point of Breach of Privilege, becauſe his Majeſty took Notice, of the *Difference* between the two Houſes, about their Fundamental Privileges, with which he was not concerned. Vol. I. 135.

But the Commons took no Notice of this Breach, and only *Voted* and Declared, *That the Lords propounding a Supply, was ſo high a Violation of their Hereditary Privileges, that they could not proceed, upon any other Buſineſs, 'till they had firſt received Satisfaction, and a Reparation, from the Houſe of Peers, for that Breach of the Fundamental Form of the Conſtitution.*

The Lords (as Lord *Clarendon* Writes) were ſenſible of their *Error*, and acknowledged the Privilege of the Commons, as fully, as they demanded it; inſiſting, *They had not broken it, by offering their Advice only, without mentioning the* Nature *of the Supply, or the* Proportion, *or* Manner *of Raiſing it, which, they* **Confeſſed**, *belonged* intirely *to the Commons.* Vol. I. 134.

The Commons Rights, being thus Aſſerted, they returned back to their own Proceedings, and to the Conſideration of his Majeſty's Propoſition, to Raiſe Money upon a Bargain and Sale, of the King's Regal Power, in Caſes of *Neceſſity*, to Impoſe Taxes by Ship-Money, *&c.* In the Debates about which *Power*, it was privately argued, *That in that Propoſition, to purchaſe off that pretended Right or Title from the Crown, were Comprized Baneful Miſchiefs; for ſuch a Bargain would, on the Part of the Houſe of Commons, Admit, and* Confeſs, *the Impoſition*

Impoſition and Exaction of Ship-Money, to be a Right, *in the Crown, and would deſtroy their own* ſole Right, *of giving or denying Money*; And moreover, *That the Remittance of it, could not extend beyond his Majeſty's Life, in Regard no Laws can bind Neceſſity; for whenever real and actual Neceſſity approaches, the Obligation of Moral Laws retires*: Any future King might therefore ſay, *That if* Neceſſity *Enabled King* Charles, *to Deſtroy that Fundamental* Form *of Government, which the Conſtitution had Eſtabliſhed, and had* Looſed *King* Charles *from the Obligations of the Original Contract, and of the Statute* De Tallagio non Concedendo, *the like* Neceſſity *would, with equal Reaſon, Enable his Succeſſor, to Imitate and Practiſe the ſame Proceedings, in Caſes of* Neceſſity, *and would Looſe ſuch Succeſſor from ſuch a Statute, as King* Charles *ſhould give the Royal Aſſent to, for its Abrogation; for the Legiſlative Authority, which ſhould make the Latter, was not ſuperior to that, which made the Former.*

And to theſe Arguments, it was added, *That now the Vizor was pulled off, and the Myſtery Revealed*: *It appeared, that the* Neceſſity, *ſo much Inſiſted on, was a mere* Fiction, *Removeable at Pleaſure*; for here was a Price, of twelve Subſidies, ſet upon it, and for that Sum, the King would part with the Pretence, and the Nation ſhould never ſuffer again, under *Neceſſity*; the Conſequence whereof was, That a Parliament of Judges could give the King a *Preſent of Neceſſity*, which the Parliament of *England* muſt buy off, at the Rate of twelve Subſidies.

It was alſo Argued, *That by the King's own Conceſſion, his* Power *to Impoſe the Tax of Ship-Money, was* Derived *from Danger, and from the* Neceſſity *to prevent that Danger; but now it appeared, that both the* Danger and Neceſſity *were fictitious, and that the taking away the Peoples Properties, under thoſe Untrue Pretences, was the moſt provoking Preſſure, and Breach of Truſt, which the People could ſuffer under*: And, therefore, that Propoſal (as being Inſidious) was, with Coldneſs, Diſregarded.

And as to the Demand of twelve Subſidies, the Debate upon this Meſſage laſted two Days, *viz.* the third and 4th of *May* 1640. without coming to any Reſolution; Sir *Henry Vane*, with

with great Truth, informed the King, *That no Money would be granted, by the Commons, to carry on a* War *againſt the* Scots; which occaſioned, amongſt the Miniſters, great Uneaſineſs: But that which *Ripened* the Miniſters Reſolutions, was, That the King was *Advertized*, the Commons *intended* to enquire into, and anatomize the *Cauſes* of the War againſt *Scotland*, for which the Supplies were *Demanded*; in which, doubtleſs, his Majeſty's aſſumed Power to impoſe the Taxes of Ship-Money, *&c.* would paſs under a ſevere Examination; and, therefore, it was obvious, the Commons, in Order to *blaſt* the Deſign, would vote, *That a* War *upon the* Scots, *was unjuſt*; The King, for that Reaſon, early the next Morning, ſent for the Speaker, to attend him, and took Care, that he ſhould go, with his Majeſty, directly to the Houſe of Peers, upon an Apprehenſion, That if the Speaker had gone to the Houſe of Commons, that Houſe would have entred on the Debate, and ſhut their Doors, and before they could be fetch'd to the Upper Houſe, would paſs that Vote, beſides entering on ſome ungrateful Diſcourſes, which the Miniſters were unwilling to hear: The King, following cloſe after the Speaker, ſent, immediately, the Uſher of the Black Rod, to bring up the Commons to attend him, and there he treated them with an abrupt and haſty Diſſolution, after a Sitting of Twenty-two Days, without doing, in this Parliament, one publick Act; although by this 4th Repetition of his Power over Parliaments, all the Rights and Privileges imparted to the two Eſtates of Lords and Commons, were fruſtrated and render'd uſeleſs.

And to this Diſſolution was *Added*, a Provoking Breach of Privilege; by cauſing, not only the Cabinets and Studies, but the very Pockets of the Lords *Warwick* and *Brook*, to be ſearched for Papers. Sanderſ. 336.

By this laſt abrupt Breaking of the Parliament, the Lords and Commons Animoſities were heated, and all their Hopes to remove their Grievances turn'd into Deſpair; for no Account of this Diſſolution, after an Interval of twelve Years, could be given, but that the ſupplying his Majeſty's Wants, by his Impoſing Double or Treble Ship-Money, and other Taxes, was then in View.

SECT. XLI.

BUT, in this Place, a Review of what were thoſe ſecret Meaſures, which the Miniſters had taken, on the 5th of *December* 1639. when the laſt Parliament was reſolved to be called, in caſe Supplies to carry on a War againſt the *Scots*, ſhould be Denied, is proper to be made: And thoſe were (as afterwards appeared) theſe;

Sanderſ. 304. D'Orleans, p. 24, 30, 32, 34. Clarendon, Vol. I. 144, 150. The Lord *Strafford* was to call a Parliament in *Ireland*, and to raiſe an *Iriſh* Army, to invade the Weſtern Parts of *Scotland*, whilſt the *Scots* were attacked in the *South*, by *Engliſh* Forces, and to prevail with that Parliament, to give Money to pay the *Iriſh* Troops, and to haſten that Buſineſs, ſo as his Lordſhip might be in *England*, in *April* 1640. at the opening of this laſt new Parliament.

A competent Force of Troops were, in the Interim, between *December* 1639, and *April* 1640. to be in like Manner raiſed in *England*; and for that End, another Loan of Money was, (as the only Thing neceſſary) to be promoted, payable by Inſtalments; the Lord *Strafford*, as an Example to encourage D'Orleans, 28. others, ſubſcribed 20000 *l.* the Archbiſhop *Laud* 10000 *l.* and moſt of his Brethren, who were more deeply concerned in the Succeſs of that War, than others, ſince it was called *Bellum Epiſcopale*, contributed largely: But, above all, None procured greater Supplies than the Queen, who ingaged the *Roman* Catholicks to furniſh moſt of the Charge of that Army.

As to the City of *London*, the Loan of 100,000 *l.* was *Demanded*; but the City Declined, pretending Poverty; but, in Reality, they were Diſguſted, at a Decree of the Star-Chamber, by which the Crown had lately, not only taken from them, their *Iriſh* Plantation at *Londonderry*, which had coſt 'em immenſe Charges; but their Patent was *Adjudged* to be forfeited, and the Undertakers grievouſly Fined in the Sum of 50,000 *l.* which made the asking ſuch a Loan of ſuch People, look Abſurd and Irrational.

However,

However, with the Loan ſo ſubſcribed, Part of an Army was raiſed in *England*, before the Parliament, in *April* 1640, met; And as to Lord *Strafford*, he ſucceſsfully executed his Part of the Scheme in *Ireland*, by raiſing an Army of 8000 Horſe and Foot, and did the *Roman* Catholicks the Honour, to account them better affected to the King than Proteſtants; and for that Reaſon, he compoſed that Army of *Iriſh* Papiſts, and obtain'd, of that Parliament, four Subſidies to pay them. D'Orleans 24.

Theſe Reſources, which were not inconſiderable, did, at the Diſſolution of the laſt Parliament, remain in the Power of the Miniſters, and that prevented the reſt of their Proceedings, from being look'd on as Chimerical.

The King immediately, or ſoon after, called together his Cabinet-Council, conſiſting of Archbiſhop *Laud*, *Strafford*, *Hamilton*, *&c.* and Sir *Henry Vane*, was admitted to be one of them; the Matter in Debate was, *What was now counſellable, and what Meaſures were, upon the preſent Diſappointment, to be taken.*

The Advices then given, were after this Manner. Sanderſ. 309, 310.

That **Neceſſity** *required his Majeſty's Honour, and Prerogatives, to be vindicated, and that that Vindication, could not be attained, without ſubduing the* Scots *by* War, *with an* Engliſh *Army, and compelling them to ſubmit to the Liturgy and Canons impoſed.*

That the **War** *with* Engliſh *Forces, upon the* Scots, *was not Dangerous; that it ought to be Offenſive, and the* Scots *to be invaded, becauſe they could not hold out five Months.*

That the King's Supplies being diſappointed, he was Looſed *in* England, *and Abſolute from all Rules of Government; That he might take in* England, *what* **Power** *would admit, and particularly the* Ship-Money *ought to be rigorouſly collected, and that the* **Army** *in* Ireland, *might be employed to reduce the Kingdom.* This muſt neceſſarily mean *England*, becauſe the Subject Matter, *viz.* Power *to take what was* Wanting, was ſpoke of *England*;

land; for, what was *Wanting*, was Money, and Money could not be had, Either in *Ireland* or *Scotland*.

If ſuch Counſel had been given by any other Counſellors, Hiſtories would have Cenſured them as Enthuſiaſtical; for natural Reaſon teacheth, That if the King were **Looſed** from all Rules of Government, the People were, in like Manner, **Looſed** from all Rules of Obedience; and if the King might take, what his **Power** would enable him to take, the People might *Defend*, what their **Power** would enable them to *Defend*: **Power**, therefore, was, according to the Miniſters, to Determine the *Difference*.

However, the new Loan, that was before begun, was now compleated, and within three Weeks after the Diſſolution, the Sum of 300,000 *l.* was made up, and paid into the *Exchequer*, and therefore the Raiſing new Forces in *England*, proceeded, and the Army was augmented to 20,000 Men.

SECT. XLII.

Echard 480. BUT the *Scots* made greater **Expedition**, and on the 21ſt of *Auguſt* 1640. entred, or invaded *England*, and purſued their *Engliſh* Inſtructions, by publiſhing two *Manifeſto's*; In one of which, they inſinuated, *That their Addreſſes to the Royal Ear, were, by* Laud *and* Strafford, *&c. interrupted and diverted*; *That theſe Miniſters were ſupported by the Queen, as ſhe Appeared at the Head of the Popiſh Faction, and preſided in all State-Conncils and Reſolutions, and made the* Neceſſity *of their* **Service** *appear, in that they were the moſt proper Inſtruments, to oppreſs the Liberties and Reformed Religion, in the three Kingdoms*: In the other *Manifeſto*, they Declared, *They had no Deſign to waſte the Goods, or ſpoil the Country*; *but only to become Petitioners to Aſſemble an* Engliſh *Parliament*; Modeſtly Deſiring, *That ſuch of the Authors, of the Troubles and Miſeries of both Kingdoms, as were* Scots, *might be Tryed and Puniſhed in* Scotland; *and that* Laud *and* Strafford *might have ſuch Puniſhment, as the* Engliſh *Parliament ſhould adjudge they deſerved.*

Theſe

These Manifestoes had the desired Effect, and so Influenced the Northern Gentlemen, that the *Scots* marched all the Length of *Northumberland*, rather Welcomed, than Opposed, until they came to the Passage over the *Tyne*, at *Newburne*, where they Defeated a Detachment of the King's Army, under the Conduct of the Lord *Conway*, and passing that River, they Seized and Possessed *Newcastle*, and *Durham*, and laid the Counties of *Durham*, and *Northumberland*, under Contribution; And even *Yorkshire* seemed rather willing to Receive the *Scots*, as *Friends*, than to Raise their Militia, and Drive them out, as *Enemies*.

Earl *Strafford*, Lord Lieutenant of *Ireland*, (being at *Dublin*) upon the first Notice of the *Scots* having Assembled an Army, to Invade *England*, forthwith (and before the King had so done in *England*) caused a Proclamation to be Issued, whereby the *Scots* were proclaimed **Rebels and Traytors**; And his Excellency being, in the Exigency of State, called home to *England*, He, at his parting from *Dublin*, and delivering the Sword there, utter'd these Words, *If ever I return to this Honourable Sword, I will not leave, of the* Scots, *in* Ireland, *Either Root or Branch*; And when he came to *England*, he spared no Pains, in the Cabinet Council, to press on the **War** Vigorously against *Scotland*, and to break all Counsels, tending to Assemble a Parliament in *England*.

But the *Scots* having Seated themselves in *Newcastle*, and *Durham*, they let the King know the main Design of their *Invasion*; and, after the manner of Subjects (and not Enemies) Petitioned his Majesty, to permit their Grievances to be, by a Parliament Convened in *England*, Redressed.

SECT. XLIII.

IN this Place, may be taken a clear View of the then Government.

There's no doubt, but the King's Ministers, who, for many Years, had governed with a high Hand, and made his Majesty appear to his Subjects, Great and Formidable, were grieved at

the Heart, that all Men ſhould now ſee the King want *Power* to Encounter, what (in Compariſon with the *Power* of *England*) might be called a ſmall *Scotiſh* Incurſion.

This, however, gave his Majeſty a plain Diſcovery of the Imbecility of his Arbitrary Oracles, Archbiſhop *Laud*, *Strafford*, *&c.* for now, when he wanted *Aſſiſtance*, thoſe Miniſters could Adminiſter no Comfort, nor Raiſe for their Maſter, Men, or Money: The whole Proſpect of Doubling, or Trebling the Ship-Money, and other Arbitrary Impoſitions, on a ſudden Vaniſhed, and in their Room, there Stared in their Faces, the *Dreadful Neceſſity*, of accounting for their paſt Behaviour, to the two Eſtates of Lords and Commons, whom they had *Inſufferably provoked*, and whoſe *Rights* had been, ſo long, and ſo injuriouſly Invaded and Oppreſſed.

The Miniſters Politicks, never dreamt of Land Dangers, and therefore the Innovation of Ship Writs, to Raiſe Money, without the Authority of Parliament, againſt Sea Dangers and *Invaſions*, would not ſerve in this Caſe of Land *Invaſions*; There is no doubt, but the then Judges, would have determined the Law to be, *That the King, by Writs, or Royal Mandates,* (to be called *Border Writs*) *might, by his* Sovereign Power, *without Authority of Parliament,* **Impoſe** *Taxes, and Raiſe Money, in the one Caſe, as well as in the other; and that his Majeſty was the* ſole Judge *of the Danger, and of the* Means *to prevent it*; but the Miſery was, the *Scots* were at Hand, to **Diſturb** the Execution of ſuch Illegal and Arbitrary Meaſures.

In Fact, the Miniſters, conſcious of their evil Adminiſtration, equally Feared and Hated Parliaments, and had driven the King *out of the Courſe of Meeting* them; and, therefore, turning every Way to avoid them, they Adviſed their Maſter to call together the Peers, and ſee what Relief they would afford; but this Counſel was as Fruitleſs in the Event, as it was Weak in the Conception; for how could it be expected, that **One** of the Two Eſtates, that had ſo long been deprived of their Rights, Privileges, and Seats in Parliament, would Aſſiſt in continuing that new **Sort** of Government?

The

The Summons of the Peers, required them to Attend his Majeſty at *York*, the 24th of *September*, 1640, which occaſion'd a ſort of Interval of Thirty Days; but the *Scots* Army being at Hand, *precipitated* the Vigour of the *Engliſh* Nation, inſomuch that Twelve of the Peers, laying aſide the King's prohibitory Commands, in the Proclamation of *April* 1629. *preſumed to Petition* his Majeſty, to Aſſemble a Parliament, which was *ſeconded* by a *Petition* for the ſame Purpoſe, from the City of *London*: So that now the Energy, and Spirit of the *Conſtitution* (like the Sun from an Eclipſe) broke out, from under the Miniſters Oppreſſion, and ſhone in its full Luſtre; for the Legiſlative Prerogatives, together with the Miniſters, did, by the Warmth of it, melt, and equally moulder away.

The Cauſes of the **War** did, in this Light appear to be fictitious and unjuſtifiable, and this Conſtitution ſo inlightened every Man; that the common Voice of the King's own **Army** was, *That the* Scots *Grievances, about their natural Presbytery, and the Liturgy, and Canons, being unworthy of a* War, *ought to be ſettled by a* Treaty *in Parliament, rather than (by Fighting and Bloodſhed) to compel their Submiſſion, to an* Authority, *which, they inſiſted, was* Illegal; for no Man could wiſh **Succeſs** in this War, without wiſhing *England* to be, by the like illegal Power, **Enſlaved**: Which proves, how natural and eaſy it is, even to the common People, to apprehend the right Side of the Queſtion.

The King ſeeing a Foreign Army of *Scots*, and his *Engliſh* Subjects importuning the ſame Thing, [a Parliament] was, in a Manner *forced and violently compelled* to call a Parliament; for the noble Hiſtorian informs us, *That his Majeſty when he came to* York *in* Auguſt, 1640. *neither meant, or intended any ſuch Thing, as calling a Parliament, but that That Reſolution was wrought by Degrees*: However, this ſpeedy Reſolution prevented the clamorous *Petitions* that were coming, from all Parts of the Nation; for now the *People's Voice*, like a Torrent, broke through the Royal Command, reſuming their Antient **Right**, to Speak of, and Demand, or (in the Proclamation Phraſe) *preſcribe* the Time for holding Parliaments.

Clarendon. Vol. I. 160, 161.

SECT.

SECT. XLIV.

THE *Scots* Invaſion was that forcible and violent Spring, which gave the *Engliſh* new Spirits, after they had, for twelve Years, languiſhed under a ſtrange Adminiſtration; **Petitions** therefore were ſent from *London*, and from ſome Counties, praying of the King, *a* **Treaty** *with the* Scots, ſome of which Petitions, were Delivered to his Majeſty, by the Lords *Wharton* and *Howard* of *Eſcricke*; but the ſame being, by the Miniſters, Deemed favourable to the *Enemy*, it was reſolved privately, in a Council of War, in which *Strafford preſided*, *That thoſe two Lords ſhould be* **Shot** *at the Head of the Army, as Movers of* Sedition; but *Strafford* had a Whiſper given him, *That if any ſuch Execution were Attempted, the* Whole Army *would Mutiny, and probably* **Revolt**, *and, perhaps, in a Rage, do* Military Juſtice, *by Cutting him and his Friends to Pieces*; This Whiſper was, probably, the Reaſon, why my Lord *Clarendon* wrote, *That the* Army *was not ſo much* Incenſed *againſt the* Scots, *as againſt* Strafford; *and that the King had no Ground to be confident of his own* Army: The two Lords were, for that Reaſon, Diſcharged, and the Matter huſhed. This is mentioned, to remind the World of two Things;

BURNET.

Clarendon, Vol. I. 145. 259.

I. *Unparalell'd Superintendency of* Strafford, *who dared to Adminiſter to two Noblemen, his Equals, ſuch Treatment. And,*

II. *That as the* Provocations, *by Impoſing the Tax of Ship-Money*, &c. *and by the Affronts to Parliaments were* **General**, *ſo the Averſion to the Miniſters, and the* Engliſh Inclinations *to the* Scots *Errand, were equally* **General**.

When the Lords met at *York*, on the Twenty-fourth Day of *September*, in the Year 1640, and had heard, a lamentable Rehearſal of the *Scotiſh* Diſorders and *Invaſion*, The Earl of *Strafford* was the only Perſon, in that Aſſembly, that *Raged* againſt the *Scots*, Declaring, *They were* Traytors, *and* Enemies *to Monarchical Government, and propoſed, and under-*

Sanderſ. 243. D'Orleans, 24.

undertook to maintain the War, *with ſuch* Engliſh, *as were Loyal, and with his* Iriſh Troops, *on whom he could* Rely, *and would* whip *the* Scots *home, in their own Blood*: He, at another Time, preſſed the King, to permit him to give the *Scots* Battle, urging, *That he durſt undertake, upon the* Peril of his Head, *to beat them Home.* Theſe *Darings* were probably made, before the Earl was apprized of *what Senſe* the Army had of his Enterprizes. Clarendon, Vol. I. 159. Sanderſ. 325.

The King was well apprized, That the Lords (when they met) would adviſe the Calling a Parliament; his Majeſty therefore, to prevent the Notion, that That Counſel ſhould ariſe from them, and, probably, Diſcerning now, That his Governning without Parliaments, was *Odious* and *Abominated*, was pleaſed to anticipate the Lords, and *Declared*, on the firſt Day of their Meeting, *That the Queen had, by a Letter, adviſed him to call a Parliament, and that he had Reſolved to do it*: My Lord *Clarendon* writes, *The King, at his coming to* York, *had* no ſuch Deſign; *but made this ſudden Declaration, to the Intent the Queen might have the Honour of it, and to endear her to the People*: but the Event was contrary; for the *People's Opinion*, That the State Revolutions had been, by the Queen, and her Popiſh Cabal, wholly *Directed*, was, by this Declaration, *Confirmed*; However, the King's Intimation of what Counſels moved him, proved, That his Majeſty very well underſtood, What Enraged his People, and What would Endear him to them. Clarendon, Vol. I. 154, 160. Echard 481.

Theſe Lords, when Aſſembled, in Order to the Calling of a Parliament, propoſed and *adviſed* (amongſt other Things) a Treaty with the *Scots*; in Anſwer to which, the King told them, *That he having already Reſolved to call a Parliament, and for that Purpoſe had ordered Writs to be Iſſued*; *that* Occurrence, *therefore, had now rendered all* Conſultations *with their Lordſhips, upon the preſent Conjuncture*, Unſeaſonable; *but as to the* Treaty, *his Majeſty conſented to it*; and after ſome Intercourſe, by Meſſages, with the *Scots*, *Rippon*, between *York* and *Durham*, was agreed to be the Place of *Treaty*; and, in Order thereto, the King Authorized and appointed Fifteen Peers, to Meet and Treat with the *Scots* Commiſſioners: The Names of thoſe Lords are ſet down, in my Lord *Clarendon*, moſt of whom, though Clarendon, Vol. I. 155.

though 'twas not then known, had **Invited** the *Scots* to make this Invaſion.

When the Commiſſioners, on both Sides, met at *Rippon*, there was not one of the *Engliſh* Commiſſioners, to whom the *Scots Complaints* of Grievances, were not Agreeable, and particularly their Grievances, proceeding from the Exceſs of the Queen's Power, of which they complained, and to which they aſcribed thoſe Grievances, were but a *Counter-Part* of thoſe *Sufferings*, which the *Engliſh* had, during all this Reign, borne and endured: The *Scots* acted, in all Things, according to their **Invited** Inſtructions, and particularly promiſed, they would never return, until *Proviſions* were made, as well for Reſtoring the juſt Liberties and Freedom of *England*, as for Eſtabliſhing their own in *Scotland*.

Clarendon, Vol. I. 157.

In fine, a *Treaty* being Reſolved on, a Ceſſation of Arms was alſo agreed on, and the Boundaries between the two Armies were ſettled, over which, either Party was not to paſs: To enlarge which Boundaries, the *Engliſh* Lords conſented and agreed, That the two Counties of *Cumberland* and *Weſtmoreland*, ſhould be added, for the better Enabling the *Scots*, to extend their Contributions, for a preſent Subſiſtance, and to raiſe 850 *l. per Diem*; but the reſt of the *Treaty* was Adjourned to *London*, to be there compleated; of all which, the King approved, and thereupon, at the Inſtance, and upon the Credit of thoſe Lords, the City of *London*, to ſupply the Exigencies of the Army in the *North*, chearfully advanced to thoſe Lords, a Loan of 200,000 *l.* and ſo the King returned from *York*, to hold the Parliament at *Weſtminſter*.

SECT. XLV.

Vol. I. 161.

THE Noble Hiſtorian could not forbear Exclaiming, *That it was ſtrange, that all the Induſtry and Learning of the late Years, had been beſtowed in finding out, and Evincing, That in Caſe of* **Neceſſity**, *any extraordinary Way for a Supply was Lawful; and upon that Ground, had proceeded, when there was* **no Neceſſity**; *and now, when the* Neceſſity *was Apparent, Money muſt be Levied in the Ordinary Courſe of Parliament, which Courſe was then more extraordinary, as* York *muſt be defended from an Enemy within* 25 *Miles of it, by Money to be*

be given at London, *Six Weeks after, and to be Collected within Six Months after that: That in the Caſe of the Ship-Money, the Seaſon and Evidence of* **Neceſſity only**, *had been Queſtioned, and the View of it, in a Perſpective of State, at a Diſtance that no Eyes could reach, was denied to be Ground enough for an Impoſition: As no Man could pull down his Neighbour's Houſe, becauſe it ſtood next Furze, or Thatch, or ſome Combuſtible Matter, which might take Fire, altho' he might do it when that Combuſtible Matter was really on Fire: But it was never denied, that* Flagrante Bello, *when an Enemy had actually Invaded the Kingdom, and ſo the* Neceſſity, *both ſeen and felt, all Mens Goods are the Goods of the Publick, to be applied to the publick Safety, and as carefully to be Repaired by the publick Stock.* The Hiſtorian was pleaſed to Add, *That it was very probable, a Parliament called at that Juncture, would do the* Buſineſs *of the* Scots, *and of thoſe who* **Invited** *them, whereas, if the King had poſitively declared,* That he would have no Parliament, ſo long as that *Army* ſtaid in *England*; but as ſoon as they were retired into their own Country, he would ſummon one, and refer all Matters to their Advice, and even to be Adviſed by them, in Compoſing the *Diſtractions* of *Scotland*; *He ſaid,* It was probable, the *Scots* would, either willingly have left the Kingdom, or ſpeedily have been Compelled; *There being at that Time, an Army in* Ireland, *ready to have* **Viſited Scotland.**

This Argument, and theſe Concluſions of the Noble Hiſtorian, had been very Reaſonable, if the Premiſes, on which the ſame were built, had been probable; for if the *Scots* had, as *Enemies*, Invaded *England*, and had come to Deſtroy and Enſlave this Nation, the Calling of a Parliament, would have been an Act, not only *Neceſſary*, but Wholeſome; for if that had been the Caſe, the **People** would (in their own Defence) have Chaſed home the Invaders.

But the Reverſe was the Caſe; for the *Scots* came, as Friends, to Save and **Relieve** *England*, as well as *Scotland*, from under the bitter *Preſſures and Sufferings*, which Grieved both, by the Means only, of a *Free Parliament*; and therefore they knew, that *England* would, by its Parliament, do the Buſineſs of them (the *Scots*) and of thoſe that **Invited** them: It is therefore more probable, That if the King had declared, *He would have no Parliament 'till the* Scots *were Retired*, a general **Revolt** had

had enſued; for the Diſtruſt of the Lords and Commons was become Incurable, in Regard there could be no Dependance on thoſe Counſels, which were every Hour Alterable, by the Influence and Power of the Popiſh Cabal: They therefore reſolved to make Uſe of the *Scots*, to ſuppreſs the Uſe of that Power, by which, the Uſe of Parliaments had been ſuppreſſed: For which Reaſon they *Treated* the *Scots*, as Brethren under the like Affliction, and even **Idolized** them, as **Thoſe only**, who could (as they did) Enforce, and even Compel the Aſſembling, and Continue the Sitting of an *Engliſh* Parliament; for without them, they knew their Sitting, as ſoon as it Diſpleaſed, would be Diſmiſſed.

SECT. XLVI.

THE Lord *Savile's* Diſcovery may be Aſſigned to this Place; for after the *Scots* were Seated in *Newcaſtle*, and *Durham*, and the general Torrent had broken forth on the King, Requeſting, or rather *Demanding*, a Parliament; and after it was found, That the Army and Country were more Incenſed *againſt* the Lord *Strafford*, than *againſt* the *Scots*, the Lord *Savile* concluded, That *Strafford's* Power could not long continue; and therefore he haſtily Deſerted his Party, and diſcovered to the King, the grand **Invitation**, and produced to his Majeſty, a Copy of the Engagement, and told him, in whoſe Hands the Original was depoſited: But this Copy being written with *Savile's* own Hand, could be no Evidence; The Force of it, therefore, was to reſt on that Lord's own Credit and Reputation. The King ſeemed greatly Obliged, and privately Committed to the Lord *Strafford*, the **Care** of Improving the Intelligence, in order to find and collect Evidence, to Impeach the **Inviters**: However, the Lord *Savile* obtained from the King, a *Promiſe to ſucceed* in the Preſidentſhip of the *North*, in Caſe *Strafford* ſhould be *Removed*.

Meaſures were therefore Concerted in the Cabinet Council, *That* Strafford *ſhould Collect what Evidence he could, of this* **Invitation**, *or Conſpiracy, and ſhould repair therewith to* London, *and* Impeach *the principal* **Inviters**, *and eſpecially Mr.* Pym, *Mr.* Hampden, *&c. of* High Treaſon.

SECT.

SECT. XLVII.

IN *November*, 1640, was opened that **Memorable** Parliament, whoſe Acts and Proceedings, in Reſtoring to the Nation, its Rights, Liberties, and Hereditary Privileges, will, as long as the Monuments of Hiſtory Remain, appear *Surprizing*; for this Parliament did, in ſome Sort, *Reſemble* the Proceedings of that Parliament, which, One hundred Years before, had, by Diſſolving the Monaſteries, Reſtored to the Nation, its Antient Freedom, Riches, and Power. Sanderſ. 323

Great Expectations were built, on what Repreſentations the King's Speech would make, of the extraordinary Affairs, then Depending: But his Majeſty, as if he had been the only Stranger, to the *general Senſe* of the Nation, did, by his Speech, Arraign the *Scots* as **Rebels**, and, with Warmth, repreſented to the Lords and Commons, *That their Primary and Principal Conſideration, ought to be, to Raiſe Money and Forces, to Chaſe out of* England, *thoſe* Rebels.

This Speech was to the Lords and Commons, who had privately **Invited** the *Scots*, Allarming; for they very well underſtood, That that **Invaſion** was the very **Cauſe** of their being now Aſſembled together in Parliament, and the Encampment and Continuance of the *Scots* Army in *England*, was the only *Means*, to Secure and Continue their Sitting, that they might (without abrupt Diſſolutions) have Time to Redreſs their *Grievances*, and to puniſh the State *Malefactors*; They were ſenſible enough, that if they ſhould *Chaſe* out the *Scots*, They themſelves ſhould ſoon after be *Chaſed* out of Doors, and ſent Home to *Grieve and Suffer*, as they had done many Years before, and, therefore, many People Murmured at the King's Calling the *Scots* **Rebels**; and yet his Majeſty Diſdaining to Mitigate or Recede, went, two or three Days after, to the Houſe of Peers, and, in a Speech to Them, Avowed the Calling the *Scots* **Rebels**, and Repeated, and Preſſed, his former Commands, to *Chaſe* them as ſuch, out of *England*. Although this Speech was a Direct Breach of the Treaty with the *Scots*, which had been Commenced at *Rippon*, and Adjourned to *London*.

SECT. XLVIII.

BUT the Parliament were Swoln with Animoſity, at the King's Governing by Arbitrary Power, without Parliaments, and therefore proceeded with Vigour, in Paſſing divers Acts, not only to ſecure themſelves, from being Broken and Surprized with a Diſability to Redreſs their Grievances, but to declare and make Proviſions againſt many Inſtances, of the Arbitrary Adminiſtration complained of, in doing whereof, all Oppoſition ſeemed to Vaniſh; the Miſchiefs and Breaches of the Conſtitution, were ſo Evident, that no Man durſt ſtand up to Defend them.

The Titles of which Acts were;

I. *An Act for preventing of Inconveniencies by long Intermiſſions of Parliaments.*

The Preamble whereof declares, *That the not holding Parliaments* frequently, *had produced ſundry and great Miſchiefs, and Inconveniencies.*

II. *An Act to prevent Inconveniencies, which may happen by the Untimely Adjourning, Proroguing, and Diſſolving, of this preſent Parliament.*

The Preamble gives the Reaſon, *viz. To Remove the People's Fears and Apprehenſions, that the King will Prorogue and Diſſolve this Parliament, before* Juſtice *can be duly Executed, or Publick Grievances* Redreſſed.

III. *An Act for Regulating the Privy Council, and for Taking away the Court, commonly called the Star Chamber*: Yet in Force.

The Preamble whereof, Aſſigns the Reaſons to be, *For that the Star Chamber had undertaken to Puniſh, where no Law did Warrant; and to Inflict heavier Puniſhments, than by any Law were Warranted; and that the Council-Table had aſſumed a Power, to intermeddle in Civil Cauſes, and to determine of the Eſtates and Liberties of the Subject, contrary to the Laws of the Land.*

IV. *An*

IV. *An Act for Repealing a Branch of a Statute,* primo Elizabethæ, *concerning Commiſſioners for Cauſes Eccleſiaſtical*: Yet in Force.

The Preamble aſſigns the Reaſon to be; *For that the Commiſſioners, by Colour of the King's Letters Patents, had* (to the Great and Inſufferable Wrong of the People) *uſed to fine and impriſon Them, and great Miſchiefs and Inconveniencies had enſued thereupon.*

V. *An Act for Declaring unlawful and void, the late Proceedings touching Ship-Money, and for vacating all Records and Proceſs touching the ſame*: Yet in Force.

By this Act (and not by the Preamble) the whole Parliament, *viz.* the King, Lords, and Commons, Declared, *That the King's* **Impoſing** *the Tax called* Ship-Money, *and the Judgment, given for the King, againſt Mr.* Hampden, *were Contrary to, and againſt the* Laws *of the Realm, the Right of* Property, *and the* Liberty *of the Subject*: Yet in Force.

VI. *An Act for Prevention of vexatious Proceedings, touching the Order of Knighthood*: Yet in Force.

The Preamble Declares theſe Proceedings to be altogether Uſeleſs and Unreaſonable.

VII. *The three Acts for Bounding the Foreſt-Laws; for Reforming the Stannary Courts, and for Regulating the Clerk of the Markets.*

It is obſervable, That when the Parliament preſented to the King, the two Bills for Aboliſhing the High Commiſſion-Court, and the Star-Chamber, They alſo offered to him, the Bill for granting a Tax by Poll-Money; his Majeſty ſhewed a Willingneſs to accept the Money, and a **Reluctancy** to paſs the other two Bills; whereupon the Houſe of Commons voted *Either All Three, or None at all*: And yet the King, on the 2d of *July* 1641. paſſed the Poll-Money Bill, and Demurred on the other two; But finding the Commons in a **Flame**, for being ſo treated; the King, three Days after, paſſed the other two Bills. Sanderſ. 427.

How-

However, the King, without making or inſiſting on any Indemnity for his Miniſters, gave the Royal Aſſent to all theſe Acts of Reformation; becauſe his Majeſty found his Compliance Abſolutely neceſſary; But thoſe Acts were paſſed with ſo much **Reluctancy**, that any Man might ſee, That if ever the Miniſters could gain **Power**, they would adviſe his Majeſty to Declare thoſe Reforming Laws, to be obtain'd by *Force and Violence*; and that, therefore, they were null and void: In which Caſe, probably, the principal Promoters of thoſe Statutes, might, as their Anceſtors in the like Caſe had done, paſs their Time very ill.

Sanderſ. 427.

Clarendon, Vol. I. 473.

SECT. XLIX.

THIS whole Narration would be imperfect, if ſome Notices were not taken, of the Impeachment and Proceedings againſt the Earl of *Strafford*, which introduced into Publick View and Debate, many Parts of this Conſtitution; And, therefore, nothing is here repreſented, but what each Side inſiſted on.

The Earl of *Strafford* came to *London*, and appeared in Parliament, on the 11th Day of *November*, 1640. being eight Days after the Opening of the Seſſion; and, doubtleſs, he brought Materials for his intended *Impeachment* of the *Inviting* Members; but the **Inviters** prevented him, and on that very Day, *Impeached* him, and procured him to be ſecured, which ſunk him under that Power, which he could never Over-match.

Baker, 478. The Grand Article of the Impeachment was; For that he, the Earl, had Endeavoured to ſubvert the Fundamental Form of the Government, and of the Laws of *England* and *Ireland*, and, inſtead thereof, to introduce an Arbitrary and Tyrannical Government.

It is to be obſerved, That this Treaſon was a Treaſon at Common-Law, and not upon the Statute of Treaſons; and was therefore to be proved by a Multiplicity of ſuch Facts, as ſtruck at the Root of the Conſtitution; which Overt-Facts, to prove this Treaſon, were Aſſigned;

I. In

I. In his Words or Declarations;

II. In his Actions, as the ſame affected the Subjects; in their Lives; in their Liberties; in their Properties.

III. In his Counſels given to the King, in the moſt important Points of State.

In this Caſe, the great Controverſy in the Houſe of Commons was, *Whether the Matter of this Charge was High-Treaſon or not.*

It was argued, by the Earl's Party, in the Houſe of Commons, *That the* **Subverſion** *of the Fundamental Form of the Government, and of the Laws of* England *and* Ireland, *was an Act not practicable, or hardly conceptible to be done, or effected by any one Man*; for, What could one private Man do, to *ſubvert* the Foundations of a Government, which had been at firſt erected, and was ſtill ſupported by a whole Nation? It might, indeed, be *ſubverted* by Armies; but, in that Caſe, the Treaſon would appear to be that Species of Treaſon, which is called Levying of War againſt the King and Government.

It was argued by that Party, *That if the Thing itſelf was not practicable or conceptible, then an* **Endeavour** *to do that Thing (that was impoſſible to be done by one Man) could not be Treaſon.*

It was further argued, *That if a Man of a Wicked Mind, and with a felonious Intent, ſhould ſecretly give unto his Friend (being a ſtrong and healthy Man) ſmall Potions of Poyſon, by which the Man's Blood, by little and little, becomes corrupted and contaminated; the firſt Effect whereof, would probably be, that he ſhould loſe the Uſe of his Legs; and, after that, of his Arms; and, after that, of his Eyes, which would reduce the Man to a Condition (worſe than Death) yet this was not Murder, neither could that Criminal be indicted for Murder; for an* Endeavour *to murder, without Death enſuing, was not Capital, and, therefore, an* **Endeavour**, *by any one Man to* ſubvert *the Fundamental Form of the Government, and of the Laws of the Nation, could not be Treaſon.*

It was Argued on the other Side, *That the Fundamental* **Form** *of the Government, and of the Laws, did mean thoſe Rules which were inſtituted, in the Formation of this* Conſtitution, *to be obſerved, between the Governor and Governed, and which did reſtrain the Governor from oppreſſing the Governed, and did intitle the Governed, to Freedom and Hereditary Privileges* (to wit, To be Governed according to thoſe Laws;) *and that thoſe Rules did paint and ſtain odious Colours on both Parties*, viz. On the Governor *Oppreſſion* and *Tyranny*, and on the Governed *Slavery*, *when the Adminiſtration differed from them*; *and that although it ſhould be admitted*, That the *Subverſion* of the Fundamental Form of Government was impracticable by any one private Subject; *yet it might be* Effected *by a Great Miniſter of State, whom the ſupreme Governor ſhould* **Intruſt** *with Commiſſions, to execute Powers Judicial, Miniſterial, Military, and even Regal or Legiſlative* (as in *Ireland*) *in regard, ſuch a Miniſter would act in a Political Capacity, and, being armed with great Commands, and great Dependencies, diſtributing Rewards and Puniſhments, he might Compaſs, and bring to Effect, the greateſt Enterprizes.*

That if ſuch a Miniſter of State, ſhall act inconſiſtently with that **Truſt**, *which the Law hath veſted in him, and perpetrate ſuch Acts, as ſhall be deſtructive, not only of that* Truſt, *but of the Fundamental* Form *of Government, and of the Laws; ſuch a Man, in Power, may undermine, ſubvert, and tear up by the Root, the very Eſſence and Foundations of the Government.*

And as to the Objection, *That an* **Endeavour** *to ſubvert the Fundamental Form of Government, could be no Treaſon when no* Subverſion *enſues*; It was Argued, and Reſolved, *That if an* Endeavour *to ſubvert, ſhould not be Treaſon, and as ſuch, ſhould not be puniſhable; it would be a vain Thing to accuſe or proſecute ſuch a powerful Offender, or to hope to puniſh or preſs him by thoſe Laws, which were themſelves firſt ſuppreſſed; eſpecially if ſuch a Malefactor ſhould fortify himſelf with Arms, and Power to defend his Miſdemeanors.*

SECT.

SECT. L.

THIS being the Introduction,

It comes now in Courſe, to State thoſe Overt Facts, which the Parliament Charged on the Earl, to prove his *Endeavours*, to ſubvert the Fundamental Form of the Government, and of the Laws; and thoſe were, as before is mentioned,

I. *His Words and Declarations, which monſtrate his Intentions*, Index Animæ ſermo.

II. *His Actions, as the ſame affected the Lives, Liberties, and Properties, of the People.*

III. *His Counſels, Given to the King in the Higheſt Points of the State and Government.*

I. *As to his Words*, The Impeachment Charged him with theſe Words, *viz.*

That the Earl, being Preſident of the Council in the North, *where Diſcretionary Powers were by him Exerciſed, did, at* York *Aſſizes, in open Court, and in the Face of the Country, Publiſh and ſay*, That ſome of the Judges were all for Law, (*meaning, They were for Granting Prohibitions, Writs of* Habeas Corpus, &c. *to Reſcue the Perſecuted People from under his Oppreſſions*) but they ſhould find the King's Little Finger, Heavier than the Loyns of the Law.

That the Earl, being Lord Lieutenant of Ireland, *which was a Kingdom Annexed to the Crown, and Governed by the ſame Laws as* England (*for the Laws of* England *had been Tranſplanted into* Ireland) *he, the Earl, did, in an Aſſembly of the Nobility and Gentry, and of the Mayor and Aldermen at* Dublin, *Publiſh and ſay*, That *Ireland* was a Conquered Nation; That the King might do with them, what he pleaſed; And that the Royal Charters, Granted to the City of *Dublin*, were Nothing worth, nor did Bind the King further than he pleaſed.

That

That he did threaten to Impriſon the Earl of Cork, *for proſecuting a Suit in Law, to Recover Lands, of which he had been Diſpoſſeſſed, by an Order of the Council Table, if he* (*Earl* Cork) *would not Ceaſe that Suit, ſaying,* That he (*Strafford*) would have neither Laws, nor Lawyers, Diſpute or Queſtion his Orders; and that he would make his Lordſhip, and all *Ireland*, know, That Acts of State, were as Binding, as Acts of Parliament.

That the Earl, in October, 1639, *Said and Declared,* That the Nation of *Scots* were **Rebels and Traytors**, *and the Earl being then about to come for* England, *he ſaid,* If the King ſhould ſend him back again, he would Root out of *Ireland*, the *Scots*, both **Root and Branch**.

That the Earl, when the Lord Mayor, Aldermen, and Sheriffs of London, *attended the King and Council, and refuſed to Lend the Money required of them, publickly ſaid, before the King in Council,* That no Good could be done with them, 'till they were laid by the Heels, and ſome of the Aldermen **hanged up.**

II. *As to the Earl's Actions,* in Relation to Mens Lives, the Impeachment Charged the Earl,

That he did, in a Council of War, called together by him in Time of Peace, and when the Courts of Juſtice were open, procure a Sentence of Death to be given againſt the Lord Mount-Norris (then a Peer of *Ireland*, Vice Treaſurer, one of the Principal Secretaries of State, and Keeper of the Privy Signet) *without any Warrant of Law, and without any Offence Committed, deſerving Death.*

Clarendon, Vol. I. 220.

My Lord *Clarendon* Stated the Matter of Fact thus: *A Servant of Earl* Strafford, *one* Anneſley (Brother to the Lord *Mount-Norris*) *had, by Accident, ſuffered a Stool to fall upon the Earl's Foot; the Earl then, Enraged with the Pain of the Gout, ſtruck* Anneſley *with a ſmall Cane*: This being merrily ſpoken of, at the Lord Chancellor's Table, my Lord *Mount-Norris*, being there at Dinner, ſaid, *The Gentleman had a Brother, that would not have taken ſuch* a Blow.

This

This Diſcourſe, coming, ſome Months after, to *Strafford*'s Hearing, he cauſed a Council of War to be called, before which, the Lord *Mount-Norris*, having a Command in the Army, was Summoned to Appear; in which Council of War, the Article of Moving Sedition, and Stirring up the Soldiers againſt the General (*Strafford*) being Read, the Lord *Mount-Norris* was, inſtantly Charged with thoſe Words, formerly ſpoken at the Lord Chancellor *Loftus*'s Table.

What Defence he made, the Noble Hiſtorian knew not; for Lord *Mount-Norris* was ſo ſurprized, that, before he came thither, he knew not what the Matter was; but the Words being proved, he was *Deprived of all his Offices*, viz. Of his Regiment of Foot, Vice Treaſurer, Secretary of State, and Keeper of the Privy Signet; and was *Committed to Priſon, and Sentenced to Loſe his Head.*

The King ſent over a *Pardon*, and ſo he was ſet at Liberty, with his Life; all other Parts of the Sentence, being before fully Executed; for all his Places were Diſpoſed of.

This appeared to all Men, an Expreſs **Subverſion** of the Fundamental *Form* of the Laws; for if, in a Time of full Peace, when the Courts of Law were open, a Peer of the Kingdom, a Privy-Counſellor, and Secretary of State, for an Unadviſed, Paſſionate, Myſterious Word (capable of many Interpretations) ſhould be Called before a Council of War, and, without any Proceſs, or Formality of Defence, in two Hours Time, be Deprived of his Life and Fortune; It gave all Men Warning, how they **Truſted** themſelves within Territories, where ſuch a Governor Commanded; for the Fundamental Laws (being by him Subverted) could afford no Man Protection. The Noble Hiſtorian adds, *That this Proceeding of the Earl, was the moſt Extravagant Act of* **Sovereignty** (i. e. Arbitrary Power) *that had been ever Executed by any Subject.* Clarendon, Vol. I. 150.

My Lord *Clarendon* Writes, *That* Strafford *made the worſt Excuſe for this* **Arbitrary** *Act of his Power*: And from what he ſays, it may be Collected, *That the Earl's Defence Aggravated the Offence*; for the Earl inſiſted, *That the Lord* Mount-Norris *was an* **Inſolent** *Perſon, and that he took that Courſe to humble him*: A rare Excuſe! That becauſe the Earl looked Vol. I. 221.

on that Lord, to be an Inſolent Man, he, therefore, to humble him, would Subvert and Violate the Fundamental Law, by taking away his Life, and Fortune, without any Crime, and without a Legal Tryal. The Noble Hiſtorian is pleaſed to ſay, *That the Earl* Submitted *to the* Pœnam Talionis, *viz. To have the like Sentence paſs upon himſelf, ſo as he might have the like* Pardon; which was a plain Confeſſion of the Guilt.

The Noble Hiſtorian adds, *That Earl* Strafford's *own Defence Aggravated his Crime, by his inſiſting,* That when *Mount-Norris* was Condemned, he (*Strafford,* although a Subject) publickly declared, *That a Hair of his Head ſhould not Periſh; and that He procured the* Pardon: This was aſſuming Royal Power. *Clarendon,* Vol. I. 221.

For, ſuppoſe the King would not have *Pardoned,* then *Mount-Norris* had continued Condemned; And as to the *Hairs his Head,* Strafford (notwithſtanding his Declaration) ſtripped him of all his Offices (if thoſe might be termed *Hairs*) and Crippled him in his Liberty, not ſuffering him to come for *England.*

The Noble Hiſtorian (who, doubtleſs, knew the Truth) is pleaſed to add, *That the Lord* Mount-Norris *was a Man of great Induſtry, Activity, and Experience, in the Affairs of* Ireland, *and that the Earl looked on him with great Jealouſy, leſt he ſhould, as he had done, by other Lieutenants, inform the Earl's* Enemies *of the Illegal Acts and Oppreſſions, which had been done, during his Government;* ſo that this *Dilemma* ſeemed Unqueſtionable, that either *Strafford* muſt deſtroy *Mount-Norris,* whilſt he (*Strafford*) continued in his Office, or *Mount-Norris* would deſtroy him, as ſoon as he ſhould be out of his Office; which made the *Injuſtice and Oppreſſion,* the more Formidable.

If a Lord Lieutenant of *Ireland,* ſhould, at this Day, practice on the *Iriſh* Nobility ſuch Experiments, the Parliament of *England* would think no Puniſhment too Great, for ſuch an Arbitrary Proceeding.

SECT.

SECT. LI.

1. *AS to the Earl's Actions, in Relation to Mens* Liberties;

The Impeachment charged the Earl, *That he, upon a bare Petition to himſelf, as Lord Lieutenant, had made an Order or Decree againſt the Lord Chancellor* Loftus, *without any Legal Proceſs or Proceedings; and had, for Diſobedience to that Order, and for refuſing to deliver up to him the Great Seal;* impriſon'd *the Chancellor; and, after that, had procured the Great Seal to be taken from him.*

My Lord *Clarendon* was pleaſed to write, *That this was a* Powerful Act of Injuſtice and Oppreſſion; *That it was* Satis pro imperio; *and that therein, the Earl indulged the Exerciſe of this Power, to his own Appetite and Paſſion, and not without a* Mixture *of that Policy, which had promoted his Dealing with Lord* Mount-Norris. Clarendon, Vol. I. 223. 150.

The Impeachment charged *Strafford, With* Impriſoning *the Earl of* Kildare *for a Year, for refuſing to ſubmit the Determination of his Title to a certain Manor and Lands, to him the Lord Lieutenant.*

That the ſaid Earl granted Warrants to every Biſhop in Ireland, *to Arreſt and Impriſon all ſuch Perſons, as ſhould omit or refuſe to perform their Eccleſiaſtical Orders and Sentences.*

That the Earl, by Proclamation, had impoſed Oaths on all Maſters of Ships, to diſcover all the Secrets, concerning the Cargoes imported into Ireland.

That the Earl procured *the King's Order or Allowance,* That no Complaint for *Injuſtice* or *Oppreſſion,* ſhould be received in *England,* unleſs the Party *firſt* made his Addreſs to him *the Lord Lieutenant* (*the Author of them*) in *Ireland.*

That the Earl in May, 1639. Impoſed an Oath *on the Proteſtant* Scots, *inhabiting in* Ireland, *wherely the Party was to Swear,* That he would not proteſt, againſt the King's Commands, but ſubmit himſelf, in all Obedience thereunto; *which*

Oath *he expounded, to oblige them to obſerve ſuch Ceremonies and Government, in the Church, as the King had, or ſhould* Eſtabliſh, *by his Regal Authority; and grievouſly* Fined, Impriſoned, Deſtroyed and Exiled *the Refuſers; and, particularly, had Fined* Henry Steward, *and his Wife,* 5000 l. *each, and their two Daughters, and* James Gray, 3000 l. *each,* for refuſing *to take the ſaid Oaths.*

SECT. LII.

II. *AS to the Earl's Actions, in Relation to Mens* Properties;

The Impeachment charged, *That the Earl, at ſundry Times, upon bare Petitions to him, as Lord Lieutenant, had made Orders, by his own* Imperious Power, *whereby divers Lands of Freehold and Inheritance in* Ireland, *were, without legal Proceſs or Trial, taken from divers Perſons;* (to wit) From the ſaid Lord *Mount-Norris,* his Manor of *Tymore;* From the Lord *Dillon* (a Peer of *Ireland*) his Lands in two Counties; From Dame *Mary Hibbots,* divers Lands, Threatning her with Impriſonments, and grievous Fines, if ſhe refuſed to relinquiſh her Title: *Which Lands, ſoon after her Relinquiſhing, were conveyed* (by the Adverſary) *In Truſt for Lord* Strafford.

That the Earl had Inhanced *the Cuſtoms, by Cauſing the Native Commodities of* Ireland, *to be Over-rated in the Book of Rates.*

That he firſt Reſtrained *the Exportation of* Iriſh *Commodities, and then raiſed great Sums, for granting Diſpenſations of that* Reſtraint.

That he, by Proclamations had firſt Reſtrained *the Importation of Tobacco, whithout Licence, and by* Means *thereof he Ingroſſed, into his own Hands, vaſt Quantities, and ſold the ſame at exceſſive Prices; and to ſecure that* Monopoly, *he Reſtrained the* expoſing *Tobacco to Sale* (except in Rolls, ſealed with his Seal, to ſhew the ſame was wholeſome) *and rigorouſly* puniſhed *the Offenders, by Seizing the Tobacco, and by Fining, Impriſoning, Whipping, and Pillory; and thereby levied to himſelf,* 100,000. l. per Annum.

That

f

That the ſaid Earl raiſed Monopolies *for his own Gain, on Starch, Iron-Pots, Glaſſes, Tobacco-Pipes, and other Commodities.*

That the Earl Monopolized *the Flax of* Ireland, *by ſeizing, as forfeited, all ſuch Flax as was not wrought up into Yarn, in the Form, he, by Proclamation, had preſcribed.*

That the ſaid Earl had Impoſed *Taxes on the Town of* Baltimore, *and other Towns in* Ireland, *and had cauſed the ſame to be levyed by* Soldiers, *who were to Quarter on the Inhabitants, 'till they ſubmitted, and paid thoſe Illegal* Impoſitions.

That the Earl had obtained ſeveral Commiſſions; whereby he, as Preſident, and others, as a Council or Court, in the Northern Counties of England, *were impowered to hear and determine certain Offences, Controverſies, and Cauſes, according to the Inſtructions, ſpecified in the Schedule thereunto annexed; One of which Directions was,* To proceed according to the Courſe of the *Star-Chamber*; *Another was,* To proceed according to the Courſe of the *Chancery*; *Another,* That no Prohibitions ſhould be granted, nor Writs of *Habeas Corpus* allowed; and that the Earl had purſued, and executed thoſe Directions, and thereby had Ruined and Deſtroyed Sir *Conyers Darcy*, Sir *John Bourcher*, and many others; *That theſe* Inſtructions *were of a new Nature, and had never before been given; but were Deviſed and Framed by the Earl, that he might be Armed with ſuch Powers, as he Deſired, and which were Arbitrary and Abſolute.*

SECT. LIII.

AS to the Earl's Counſels given to the King, in high Points of his Regal Adminiſtration,

The Impeachment charged, *That the Earl, after the* Pacification *with* Scotland, *made* Anno 1639. *did adviſe the King,* That the Demands of the *Scots*, made in their Parliament, were a ſufficient Cauſe of War againſt them, by Sea and Land; *and Declared before the King, in the Privy-Council,* That if the *Engliſh* Parliament, which was to meet in *April* 1640. would

not ſupply or aid the King, to maintain that War, he would ſerve his Majeſty in any other Way.

That the ſaid Earl Procured *the King to Diſſolve the Parliament on the fifth of* May 1640. *and cauſed to be Printed, and Publiſhed, a falſe, and ſcandalous Book, Intituled,* His Majeſty's Declaration, of his Cauſes, to Diſſolve the laſt Parliament; *full of Invectives, and falſe and ſcandalous Aſperſions againſt the Houſe of Commons; and did Counſel the King,* That his Majeſty had tried all Ways, and was refuſed, and that therefore he was Looſe and Abſolved from all Rules of Government, and was to do every Thing, that Power would admit; and that he had an Army in *Ireland,* which he might Employ, to *Reduce this Kingdom* to Obedience.

That he adviſed the King to go on Rigorouſly, in Levying the Ship-Money, and procured divers Sheriffs to be proſecuted in the Star-Chamber, *for not Levying the ſame.*

Theſe were the Words and Overt-Facts, in Relation to Mens Lives, Liberties, and Properties, and alſo the Councils, which were charged by the Impeachment, to prove the Treaſon (*viz.*) *That the Earl had* Endeavoured *to ſubvert the* Fundamental Form *of Government in* England *and* Ireland; that is, He had *Changed* the Form of Government, he had Deſerted the Laws of this Government, and had governed according to his Arbitrary Will and Pleaſure.

It was therefore inſiſted on, *That one of the* Fundamental Laws, of Government, inſtituted by the Original Conſtitution, was, *That no Freeman ſhould be* Impriſoned, *or* Diſſeized, *or in any Manner* Deſtroyed, *unleſs by the Judgment of his Peers, or by the Law of the Land; and that* Juſtice *ſhould not be* Denied *to any Man*: That the Fundamental Form of Government, did alſo *Mean,* the Legiſlature, veſted in the three Eſtates of King, Lords, and Commons, and that no Part of the Laws could be altered, but by that Legiſlature.

It ws therefore Urged, *That the Treaſon here charged, was not an* Endeavour *to ſubvert the Power of the* Supreme Governor, *but, on the contrary, to Exalt it*; But the Treaſon intended and charged, was an Endeavour to ſubvert the Fundamental Form of Government, by which the Governed were Inti-

Intituled to Freedom, and to Hereditary Privileges, and, therefore, the Earl's Acts, did Accroach to the Crown, or Supreme Governor, ſuch an **Arbitrary** Power, as would overturn the Rights and Privileges of the other two Eſtates of Lords and Commons.

For the Earl went roundly to Work; He laid his Ax to the **Root** of the Trees, and, in order to ſubvert them, he actually Cut down the Talleſt Cedars; to wit, The Lord Chancellor *Loftus*, the Lord *Mount-Norris*, the Treaſurer, the Secretary of State, and other Noblemen, *&c.* After which, the Inferior People Trembled, and became Enſlaved, Concluding, That if the Fundamental **Form** of Government, and the Laws of the Land, could not preſerve the Greateſt, how could the *Inferior* People expect Safety and Protection?

It was argued, *That if there were no Treaſons, but thoſe againſt the King*, who is but One of the Three Eſtates, *then the Rights of the other Two Eſtates, are left Naked, and without* **Defence**; for in that Caſe, any bold *Malefactor*, with the Aſſiſtance of the ſupreme Governor, might Deſtroy the Fundamental **Rights** of the Lords and Commons, with Impunity; and that this would be the Event, if the Earl eſcaped; for the Lords and Commons, had not any *Right*, that he had left *Unviolated.*

It was argued, *That the Commons of* England, *by this Impeachment, Cryed out againſt Oppreſſion, and for Juſtice againſt the Oppreſſor, as a publick* **Enemy** *to the Nation.*

SECT. LIV.

THE **Defence** which the Earl made to this Impeachment, in Relation to Matters of Fact, conſiſted principally of Excuſes and Evaſions; but as to the greateſt **Offence**, he inſiſted, That the *Debate* in the Privy Council, was, about a **War** with *Scotland*; and that his *Advice* was, That the King might Employ the *Army* in *Ireland*, to Reduce *Scotland*, and not *England*; that the Evidence was Ambiguous; that a ſmall Variance of a Letter, would alter the Caſe, whether the Words were Here, or There, This, or That, Kingdom: But his principal *Defence*, Reſted on the Point of Law, *viz.* That an **Endeavour**

vour to Subvert the Fundamental **Form** of Government, and the Laws of the Land, was not High Treaſon, Either at the *Common Law*, or by any Statute in Force; or if it were Treaſon, he demanded, *Where was the* Law *to ſhew it? Where had this* Fire *been hid, for ſo many Years, without* Smoak *to Diſcover it? Shall* Puniſhment *for a Breach, precede the Promulgation of the Law? Where was the* Token *which ſhould ſhew the Danger, or where was the* Buoy, *or Indication, to ſhew him how to avoid that Danger? What* Mark *was ſet upon the Door where the Plague was, to prevent his Entry, and to Eſcape the Infection?* This was a moving Sort of Argument, and made on the Auditory, great Impreſſions.

SECT. LV.

THE Managers for the Commons, Replied, with the like Allegories, *That if the Owners of a Ship, freighted with a Cargo of vaſt Value, ſhould conſtitute a Commander, to preſide in the Voyage; and if that Commander ſhould throw Over-board the Ballaſt, Break the* Rudder, *Spoil the Compaſs, Cut the Anchor, or Cable, and, after that, Hoiſt the Main Sails, ſuch a Ship would inevitably* Bulge *upon Rocks, or Sands, and no* Buoy, *or Light-houſe, could be of any Value, to a Ship ſo Commanded: Now if the Owners could borrow their Neighbours Boats, Purſue, and Board the Ship, and Seize the Commander, would not the Yard's Arm, be the Place to Chaſtize him?* They added, *That when it is known, that a Rich Booty is in the Houſe, a* Mark *on the Door, ſignifying, that the Plague was within, would be of little Signification to deter a* Spoliator.

SECT. LVI.

Clarendon, Vol. I. 225.

BUT the Lords admitted Counſel on the Earl's Behalf, to Argue the Point of Law; and, accordingly, Mr. *Lane*, of Counſel for the Earl, Introduced his Argument thus, *viz. That he would not pretend to ſay, what kind of* Crime *it was, to* **Endeavour** *to Subvert the Fundamental* Form *of the Government, or of the Laws of the Land, He admitted, that ſuch a* **Crime** *was Unnatural, and Monſtrous, and the* Puniſhment *ought to keep the ſame Proportion*: But he argued;

I. *That*

I. *That all Treaſons were Reduced to the Particulars ſpecified in the Statute of* 25 E. III. cap. 2.

II. *And that nothing elſe was, or could be, Treaſon.*

That by the Statute of 1 H. IV. cap. 10. *It was Enacted,* That Nothing ſhould be Judged Treaſon, but what was Ordained by the Statute of 25 *E.* III. *cap.* 2.

That no Precedent of any other Treaſon, could be ſhewed ſince that Time.

That by the Statute of 1° Mar. cap. 10. *all* Tryals *of Treaſon ſhould be according to the Rules of the Common Law, and not otherwiſe.*

That an **Endeavour** *to* Subvert *the Fundamental* Form *of the Law of the Land* (although it ſhould be by Force attempted) *is not Treaſon, but is only Felony, by the Statute of* 1 Mar. cap. 12.

That Cardinal Wolſey, *for Endeavouring to bring in the* **Civil,** *or Imperial, Laws, was Indicted only of a* Præmunire.

That an Endeavour to Levy War, during Queen Elizabeth's *Life* (without *War* actually Levied) *was made Treaſon by the* 13*th of* Eliz. cap. 1. *which proved,* That ſuch an Endeavour was not Treaſon *before.*

And therefore Mr. *Lane* concluded, *That none of the Earl's Words, or Actions, or Counſels, were Overt Facts of any Treaſon.*

SECT. LVII.

THE Managers for the Commons, were well furniſhed with Matter, to have Replied to this Argument, if they had ſo pleaſed; for they might have Argued, That the Statute of 25 *E.* III. *cap.* 2. had declared only, ſuch Matters to be Treaſon, as Related to the King, without meddling with the other Parts of the Conſtitution.

But as to ſuch Treaſons, as ſhould Attempt to **Change** the Fundamental *Form* of Government, in the Making and Enacting Laws, by the Three Eſtates of King, Lords, and Commons, or the Eſſential **Forms** of Law, according to which, Right and Juſtice ought to be Diſtributed and Adminiſtred; The Diminiſhing or Diſmembring the Power, or Independency, or Trade of this Nation, or any of the Dominions thereunto belonging, ſo as to Reduce this Nation, to an **Inferiority** in Power or Trade, to Neighbouring Potentates;

Theſe Treaſons were never Intended to be Declared, or Meddled with, or Comprized in, or by, any of the Statutes, which Mr. *Lane* Quoted; for they were not Treaſon againſt the King, becauſe ſuch Facts, as the King Conſents to, and Authorizes, can never be Treaſon againſt him; But the Treaſon for which the Earl was Impeached, were Original Treaſons, againſt the Conſtitution, and Laws of the Land; and that ſo long as the Being of this Conſtitution Remains, will ſo Remain;
Echard 481 for every Government, where theſe Violations may be Committed with Impunity, muſt be Confounded and Diſſolved.

The Commons could have ſhewed Proſecutions, for Treaſons of this Nature, which had been put in Practice, both before, and after, the Making of the Statute of Treaſons; as appears from theſe Inſtances:

In the Parliament of *R.* II. (which was but 34 Years after the Statute of Treaſons) Five Judges, *viz.* The Two Chief Juſtices, *Treſilian*, and *Belknap*, and Three Judges, *Holt*, *Fulthorp*, and *Burgh*, were Impeached and Attainted of High Treaſon, for **Endeavouring** to Subvert the Fundamental **Form** of the Government, and of the Laws of the Land. The Overt-Facts of which Treaſon, were for giving the King their Opinions in theſe Points:

That the Proceedings in Parliament, upon any Matters before thoſe preſcribed by the King, were finiſhed, was ſuch a Crime, as thoſe who Committed it, ought to be Puniſhed as Traytors: That if the Commons, in Parliament Aſſembled, Impeached any of the King's Officers, without his Leave firſt had and obtained, they were Puniſhable, as Traytors: That that Member of the Houſe of Commons, who Moved in Parliament,

That

That the Record of the Statute ſhould be ſent for, whereby King *Edward* II. had been proceeded againſt, *was Criminous, and a Traytor, worthy to be Puniſhed.*

The Commons could have remembered and urged, the Caſe of the Duke of *Suffolk*, who, in the Twenty-Eighth Year of King *Henry* VI. was Impeached of High Treaſon, for Diminiſhing and Diſmembring the Power of this Nation, in making a ſeparate Peace with *France*, whereby ſome of this Nation's Allies, were Abandoned, and others totally Ruined.

They could have Remembered the Caſe of *Empſom* and *Dudley*, who were, in the firſt Year of King *Henry* VIII. indicted, tried, and convicted at Common-Law, for High-Treaſon, in *Subverting* the Laws of the Land; the Overt Facts of which Treaſon, are ſet forth in the Indictment, as may be ſeen in *Anderſon*'s Reports, Fol. 156. the Legality of which Attainder, was never Queſtioned.

And yet none of theſe Treaſons are ſpecified in the Statute of 25 *E.* III. *cap.* 2. Nor was it ever objected, *That the ſame were not Treaſon*; but the Commons Diſdained to argue, with a Private Counſellor, who, for his Fees, was in Duty obliged to make ſuch Interpretations, as would beſt ſerve his Client's Advantage; and, therefore, that Parliament, and all ſucceeding Parliaments, have removed that Inconvenience; for, in Regard, every Commoner's Conſent is, in the very Impeachment, involved, the Houſe of Commons have not, ſince that Time, ſuffered the Legality of their Impeachments, in Caſes Capital, to be, by any Commoner Diſputed or Argued; but, Whether an Amendment of the Law, is not, in that Particular, Wanting, may be left, as a Query for Conſideration.

SECT. LVIII.

HOWEVER, Mr. *Lane*'s Arguments perplexed the Point of Treaſon, in the Minds of ſuch, as were unlearned, or had not inquired into the Nature of the *Conſtitution*, who were, in Fact, numerous; which Diſadvantage, being joined with the Queen's Inceſſant Endeavours, to Acquit or Deliver the Offender, made the Commons ſuſpect the *Succeſs* of their Impeachment; and therefore the Commons turned their Proſecution into a Bill of Attainder, Clarendon, Vol. I. 145.

Attainder, founded upon that Poſition of Law, *That the Earl had* Endeavoured *to Subvert the* Fundamental Form *of the Government, and of the Laws of* England *and* Ireland; and that That Endeavour was High-Treaſon.

The great Oppoſer of this Bill, in the Houſe of Commons, was the Lord *Digby*, who *Admitted* the Treaſon, (to wit) *That Adviſing the King to Employ the Army in* Ireland, *to Reduce* England, *was Treaſon*; but he inſiſted, *That the Proof that* England *was the Kingdom meant, in that Advice, was Deficient*; In Anſwer to which, it was inſiſted, *That a* War *with* Scotland, *viz. Whether there ſhould be a War or not? was not the Matter in Debate; for that had been before reſolved on, but the* Subject Matter *in Debate was, the Want of Money, to carry on that War; for, without Money, the* Iriſh *Army could do little againſt* Scotland; *no Money could be had in* Scotland *or* Ireland; *Money therefore was Demanded of* England, *and* England *had Denied it; The Advice, therefore, concerned the* Subject Matter *of Money, which was,* That the King was looſed from all the Rules of Government, he might take what Force would allow, and that he might Employ the Army in *Ireland*, to reduce the Kingdom; *It was therefore Demanded*, Whether the Kingdom that Denied the Money required, which, in Fact was *England*, was that Kingdom neceſſarily meant, or not?

The Bill therefore ſoon paſſed the two Houſes; but that Paſſage was opened, and made, by the People's Outcries and Clamours for Juſtice; For how the King came to paſs it, is afterwards related.

14 Car. II. cap. 29. And, therefore, without breaking the Contemplation of this Point of Law, it may be obſerved, That after King *Charles* II. was reſtored, in the Year 1660. when an Act of Parliament to repeal the Act of Attainder of Earl *Strafford*, came under Conſideration, at which Time, the Influence of the Queen-Mother, and of her *Romiſh* Party (who were likewiſe reſtored) made all Things paſs, as it were, in a contrary Torrent, yet the two Eſtates of Lords and Commons took Care, That the Poſition or Point of Treaſon, *viz. That an* Endeavour *to ſubvert the* Fundamental Form *of the Government, or of the Laws of* England, *was High-Treaſon*, ſhould remain rather Affirmed, than Queſtioned; for the Repeal of that Attainder, was

was founded upon this ſingle Suppoſition, That *That Act was obtained by Tumultuary Force and Violence; and not for being founded on a ſuppoſed Law, that was not Law*, as will appear to any one, who Reads that Act with Attention.

SECT. LXI.

Another Inſtance which happen'd in this Seſſion of Parliament, proving and illuſtrating the *Conſtitution* to be, as is before Aſſerted, was thus; When the Bill of Attainder of the Earl of *Strafford*, for High-Treaſon, had paſſed the Commons, and was Depending with the Lords; the King, out of *Zeal* to ſave the Favourite Earl, went to the Houſe of Peers, and ſending for the Commons, his Majeſty, in a Speech from the Throne, Declared to both Houſes, *That he could not with the Safety of a good Conſcience, give his Conſent to the Bill, if it ſhould be brought to him, that was there Depending, concerning the Earl of* Strafford, *becauſe he was not ſatisfied in the Point of the Treaſon.*

The Commons, at their Return to their Houſe, fell into hot Debates, in which, Notice was taken, That his Majeſty had, in his Speech, plainly Aſſerted, *That the* **Subverting** *the* Fundamental Laws, *and the Introducing an* **Arbitrary** *Government in this Kingdom*, were not Treaſon; *and that therefore that untimely Speech could have no other End, but to* **Blaſt** *the Credit of Parliamentary Proceedings*; and thereupon the Houſe came to a Reſolution, and voted, *That this Act of his Majeſty, was the moſt unparallell'd Breach of Privilege, that had ever happen'd*; For if the King might take Notice of what Bills were paſſing in either Houſe of Parliament, and Declare his own Opinion, before the ſame, in a Parliamentary Courſe, came before him, It was to *fore-judge* their Counſels, and they ſhould not be able to ſupply the Common-Wealth with wholſome Laws, ſuitable to the Diſeaſes it Laboured under; That this was the greateſt **Obſtruction** of Juſtice, that could be imagined, and that the Privileges of Parliament were thereby invaded and violated.

It is Storied of Biſhop *Juxon*, as an Immortal Inſtance of his Inviolable, and Invincible Fidelity, and Integrity, That when his Turn came, (as a Privy Counſellor) to EACHARD.

give his Opinion, about the Paſſing or Rejecting this Bill, he Heroically told the King, *That if his Majeſty was not ſatisfied in his Conſcience, with the Treaſon*, viz. That the Subverting the Fundamental Form of this Government, and of the Laws, and the introducing an Arbitrary Government, was Treaſon, *He ought not to do any Thing, with an unſatisfied Conſcience, for any Conſideration in the World.*

Clarendon, Vol. I. 257.

But it may be Storied of Doctor *Williams*, the Archbiſhop of *York*, as an Inſtance of his Greater Sincerity, Fidelity, and True Affection to his Majeſty, and his Royal Conſort, and to their Progeny, That he, when his Turn came (as a Privy-Counſellor) to give his Opinion and Advice, about the Paſſing, or Rejecting that Bill, did Heroically (becauſe without Flattery) tell the King, *That if his Majeſty was ſatisfied in his Political and Legal Conſcience*, That the Subverting of the Fundamental Form of this Government, and of the Laws, and the Introducing an Arbitrary Government was High-Treaſon, (the Facts Endeavouring to do it, being undeniable) *He ought not to contradict that Political Conſcience, under any Pretence of Gratifying a* Private Conſcience *or* Inclination; which might be, by Flatterers, created and nouriſhed; becauſe any Conſcience, which differed from the Fundamental Form of the Government, and of the Laws, was not only *Erroneous, but Rebellious to his Coronation Oath*, and the Hearkening thereto, might infer, his Abdication of this Form of Government.

The King being, at this Time, convinced, by the Irreſiſtible Truth and Force of the Archbiſhop of *York*'s Reaſons, and Advice, paſſed the Bill of Attainder of the Earl of *Strafford*.

The Earl of *Strafford* was Executed; and nothing can be *Added* to what Hiſtorians have ſaid, concerning the Acuteneſs and the Compaſs of his Underſtanding, his unlimited Riches, and the Arbitrary Power, which his Prince permitted him to Exerciſe; but only, that he wanted the Cautious, or Subtle Policy, neceſſary to a Stateſman: For his Conduct made it believed, he had imbibed the Maxims of the **Civil Law**, and with them an inveterate Enmity to the Limitations of Government Inſtituted by this Conſtitution, and the Common Law of the Land.

The

The Lord *Savile*, pending *Strafford*'s Tryal, made to the King and Queen privately, a *fuller Diſcovery* of all the Secrets he knew, touching the **Invitation** of the *Scots*, and what Lords and Commoners, in both Kingdoms, had conſpired to effect that Invaſion, expecting, doubtleſs, for the Merit of that Service, great Advancement, in Performance of the King's Promiſes.

SECT. LX.

THE Repreſentation of the Conſtitution would ſtill be Defective, if ſome Notice were not taken of the Impeachment of the Judges, for their Extrajudicial and Judicial Opinions, in the Caſe of the Ship-Money, and of thoſe Reaſons that were offered to ſupport the Impeachment, which cannot be ſtated, without Repeating the Caſe, and the Judges Opinion.

Five of the Judges were Impeached for High Crimes and Miſdemeanors, and Judge *Berkeley* for High-Treaſon.

The Overt-Facts to maintain the Impeachment were;

That the King had ſent a Caſe to the Judges, ſigned by himſelf, in which the Queſtion was, When the Safety of the Kingdom in general, is concerned, and the whole Kingdom in Danger; Whether may not the King, by Writ (or Letter) under the Great Seal of *England*, *Command* all the Subjects, at their Charge, to provide and furniſh ſuch Number of Ships, with Men, Victuals, and Ammunition, and for ſuch *Time* as he ſhall think fit, for the **Defence** of the Kingdom, and by Law **Compel** the Doing thereof, in Caſe of Refractorineſs? and Whether, *in ſuch Caſe*, Is not the King the **ſole Judge** both of the Danger, and *when*, and *how* it is to be prevented?

To which Caſe, the Twelve Judges gave this Anſwer, ſubſcribed by them All:

When the Safety of the Kingdom in general is concerned, and the whole Kingdom in Danger, the King may, by ſuch Writ, Command all the Subjects, at their Charge, to provide and furniſh ſuch Number of Ships, with Men, Victuals, and Ammunition, and for ſuch Time as his Majeſty ſhall think fit, for the

Defence

Defence *of the Kingdom*; *and that by Law, the King may* **Compel** *the Doing thereof, in Caſe of Refractorineſs*; *and that the King is the* **ſole Judge**, *both of the Danger, and* when, *and* how *it is to be prevented.*

The Proceedings upon this Opinion, and the Judgment given, purſuant thereunto, againſt M. *Hampden*, are before ſtated.

The Arguments to maintain the Impeachment, were to this Effect; *viz.*

That the Judgment that enſued, was a Plenary Execution of the Opinion, and had Declared the Law to be, or rather had made a New Law, That the King may Declare Danger, as often as he pleaſed; *Which was made Good, by the Words*, The King is the ſole Judge of the Danger, and of the Time when it is to be prevented.

That ſo often, the King may alter the Property of Mens Eſtates, by theſe Words, That his Majeſty may, by Writ, compel the Subjects, at their Charge, to provide Ships, *&c.*

That this Alteration of Property, may be in what Proportion the King pleaſed; *for by theſe Words*, His Majeſty may command them to provide ſuch Number of Ships, and for ſuch Time as he ſhall think fit.

That this Power included Mens Perſons; *For by theſe Words*, The King may Compel; *in Regard, he is the ſole Judge of the Danger, and how it is to be prevented*; *for if the King was the ſole Judge, and had Power to compel Obedience, how he pleaſed, there could be no doubt but that* Power Extended to Life, *if he pleaſed, in Caſe of Refractorineſs.*

This Poſition was made good, by the Compulſory Writ, which the King ſent out, which Denominated Men to be Rebels, who ſhould be Refractory, and commanded them, without further Warrant, to be impriſoned and dealt with, as the King ſhould pleaſe further to order.

That the Power given by this Opinion, touching the **Defence** *of the Kingdom, was General*; *That it extended to all Dangers,*

Dangers, to all Means to be provided againſt them, and to all Times, Qui jacet in Terra, non habet unde cadat.

That this Judgment Grappled with, and Overturned the Judicature *of the Parliament, and all thoſe Rights ſpecified in the Petition of Right, whereas Caſes of Great and General Concernment, ought to be Adjourned into Parliament: For the* Defence *of the Kingdom* (when that comes in Queſtion) *is the peculiar Buſineſs of the Parliament.*

That the Statute De Tallagio non Concedendo, *was the People's Wall, or Bank, to* Defend *againſt the Torrent of Arbitrary Power; but theſe Judges, who were truſted with the Care to Overſee, and Preſerve the Wall, had turned Pioniers, and Undermined and Levelled it.*

It was Argued, *That the Laws were our Forts, to Defend our Property and Eſtates*; but theſe Judges had not only cauſed them to ceaſe Defending, but to be held againſt us, and had turned the Mouths of our own Cannon upon us; for our Laws were made Uſe of, to take away our Eſtates.

That theſe Judges had made a Progreſs through the Study of the Laws, like that of diligent Spies, through a Country, into which they intended to Conduct the Enemy.

Therefore, as they had proclaimed themſelves *Enemies* to our Laws and Nation, they ought to be Treated as *Enemies.*

SECT. LX.

BUT to Return, It muſt be obſerved, That the *Scots* Army, during all theſe Tranſactions in Parliament, *viz.* From *Auguſt*, 1640, 'till near *Auguſt*, 1641, Continued about *Newcaſtle*, and *Durham*, without which, it's probable, the King's Miniſters would never have Adviſed, or Permitted, him to Paſs thoſe Acts, or make ſuch a Complication of **Conceſſions**, or rather Confeſſions, as before is mentioned; for in Fact, they Carried in them a Mortification, hardly to be endured.

The next Thing that came under Conſideration, was to take *Meaſures* about the *Scots* Army, who had ſo long Burthened

the Northern Counties; and in this Affair, both Houſes Behaved with ſo much Mildneſs, that gave Occaſion to many Speculations; for inſtead of Raiſing an *Army, and Chaſing them out as Enemies,* and obliging them to Refund the Damages the Country had Suſtained, the Parliament Paſſed, and the King gave the Royal Aſſent to, Acts, for Raiſing and Paying them 300,000 *l. Sterling, viz.* 100,000 *l.* down in Hand, and 200,000 *l.* more, in two Years, without Diſcounting thereout, what had been Raiſed by Contributions; And alſo to Reſtore Amity between the two Nations; by which, the *Scots* Invaſion was, in Effect, Juſtified, and they were, in ſome Sort, Treated like Auxiliary *Friends,* and as ſuch, Gratified, and Rewarded.

Theſe were the Grand *Atchievements* of this Unparallell'd Seſſions of Parliament, which, to outward Views, tended to Quietneſs, and a Peaceable Government; for both Armies were ſoon after *Disbanded*: It becomes, therefore, *Neceſſary,* to Search, and Enquire, into thoſe *Dark Cauſes,* which, ſoon after, produced ſuch Animoſities, *Wars,* and Bloodſhed.

It muſt be remembred, That the King's *Conceſſions* in Complying with this Parliament, being contrary to the very Make and Frame of the Queen's Mind, produced theſe different Effects, which cannot be Deſcribed, without Viewing,

I. *The Temper of the King, and of the Queen, and of the Nuncio, and* Roman *Clergy, who Governed the Queen.*

II. *The New Temper of the People.*

III. *The Circumſtances of the Lords and Commoners, Concerned in the* Invitation, *and Sollicitation, of the* Scots *Invaſion.*

I. As to the King himſelf, it is obſervable, *That he was Perſonally of a Clear Apprehenſion and Underſtanding; But in all Matters of Conſequence, he generally Waved his own Judgment, and Delegated, and Reſted, his whole Conduct, on the Judgment of Others.*

The Queen, whoſe Power with the King was Abſolute, did, by the Inſtigation of her Popiſh Prieſts, Incenſe the King at his own Conceſſions, in regard, the ſame carried in them, a Mortification

tification Inſupportable; for by his giving to the Acts of Reformation, the Royal Aſſent, the King did, aſmuch as he could, by any Inſtrument under his Hand and Seal, Acknowledge and Confeſs, *That all the Inſtances of his Government* (which, by the Acts before mentioned, were Redreſſed) *were Arbitrary and Illegal, and were Expreſs Breaches of the Fundamental Form of this Government.*

II. As to the People in General, *viz.* The Lords and Commons, who were Strangers to the *Invitation*, and had not Acted in the Sollicitation of the *Scots* Invaſion, and expected no more, than a Redreſs of their *Preſſures and Sufferings*, they Acquieſced with the King's *Conceſſions*, and returned to a Competent Obedience and Reſpect, towards his Majeſty's Perſon and Government; and Theſe were more, than one Half of the Nation. My Lord *Clarendon* Writes, *That upon Paſſing thoſe Bills, the Temper and Spirit of the People, both within, and without, the Walls of the Two Houſes, grew Marvellous Calm and Compoſed.* Clarendon, Vol. I. 262.

III. As to the Condition of the **Inviting** Lords and Commoners, their Circumſtances were Precarious; for no Act of **Oblivion** had paſſed, and they knew the Queen's Temper, (when attended with Power) to be Inexorable; and that, in all Human Affairs, there happen *great Viciſſitudes*; and therefore theſe **Inviters** (notwithſtanding the National Benefit accrewing from their great Undertakings) were obliged to be always upon their Guard, to **Defend** themſelves.

SECT. LXII.

THESE being the Circumſtances and Diſpoſition of the Nation, a New *Æra* of Government may from thence be Commenced.

As to the King's late *Conceſſions*, and the Proceedings in Relation to the *Scots*, with which his Majeſty, in order to the Disbanding the two Armies, had Conceded, thoſe lay upon the Minds of the Queen, and her Miniſters, as a Grinding Vexation; and, therefore, from the Sequel, it may be conjectured,

That

That the Miniſters, over whom the Queen preſided, did conclude, That the Diſcoveries made by the Lord *Savile*, and the Evidences which Earl *Strafford* had Diſcovered and Collected in the *North*, were ſufficient to Satisfy and Convince all indifferent Men, of the Truth of thoſe private Correſpondences: And from hence it may be *preſumed*, That the Cabinet Council, in which the Queen's Influence always turned the Scale, came to theſe Reſolutions, *viz.*

I. *That this private* **Invitation** *and Sollicitation of the* Scots, *to Invade* England, *being the true* **Cauſe** *of all the* Neceſſities, *which brought the King to make thoſe* **Conceſſions**, *was therefore flagrant High Treaſon; and that the Proſecution and Conviction of thoſe* **Inviters**, *both Lords and Commons, ought to be Compaſſed in Forms, that might appear Legal, if poſſible, becauſe* Succeſs *in that Point, would open a Way, and afford Means, by which all the* Conceſſions *might be Reſcinded.*

II. *That in Order to Attain this End, it was neceſſary, that* Scotland *ſhould be Quieted, and Brought, at leaſt, to a Neutrality; but the Difficulty how that could be Compaſſed, after the King had, by obtaining the Act of* 1633, *and Proſecuting* Balmerino, *for being Privy only, to a Petition, to Redreſs their Grievances; and after the King had ſo lately, by two Speeches to the Parliament, Arraigned the* Scots *as Rebels, and Zealouſly preſſed the Chaſing them, as ſuch, out of* England: *I ſay, The Difficulty appear'd Obvious, and almoſt Inſuparable; Nothing leſs, therefore, than his Majeſty's taking a Journey to* Scotland, *and Calling a Parliament, and, in Perſon, Paſſing ſuch Acts, as would Pleaſe and Gratify that People; and his Raiſing ſuch of the* Scots *as deſired it, to Honour and Dignities, could poſſibly diſingage them from their* Engliſh *Engagements, and attain the Neutrality aimed at.*

D'Orleans 45. III. *That ſince his Majeſty could not be Beloved, he muſt put himſelf into a Condition to be Feared.*

To theſe Reſolutions, it was Added, *That his Majeſty's Journey to* Edinburgh, *would Enable him to find and obtain ſtrong Evidence, to Convict the Conſpiring* **Inviters**; *and particularly, That his Majeſty might, probably, find Means to get out of* Wariſtoun's *Hand, the Original Engagement; and that*

that ſuch a Conviction, *would Pave the Way for Annulling all thoſe* Conceſſions, *by which the King's Adminiſtration, and his Miniſters, ſtood, in a manner, Condemned, or however, very much Diſparaged.*

Theſe Meaſures were, for a long Time, kept in Obſcurity, and may therefore be termed the *Dark Scheme*, and the obſtinate Proſecution of the **Invitation**, may be accounted the very true (though hidden) *Spring and Ground* of all the Wars and Troubles that enſued; for it came to be Diſcovered only, by Degrees, as Cauſes come to be known by their Effects, or a Tree, by its Fruits; the Scheme being, in itſelf, of a Nice and Delicate Contexture: Its Compaſs was Vaſt, for it was, in effect, to Alter the whole Complexion of three Kingdoms; and therefore a Diſappointment in any one Part, was ſufficient to Diſſolve the whole Machine. However, every Article of it was Attempted, and every Attempt proved Unſucceſsful; and the Conſequences covered the three Nations with Calamities, Dreadful and Amazing.

SECT. LXIII.

ALL Things being now Quieted, the King, in Execution of Part of the Scheme, Reſolved, in *July* 1641, to make a Tour into *Scotland*, to Settle (as was given out) Affairs in that Kingdom; but, in Reality, to Compaſs ſome Undertakings, that were not publickly owned; which Reſolution Alarmed the Leading **Inviters** at *Weſtminſter*, who could not Imagine, what ſhould be the Meaning of that Journey, after his Majeſty had ſo lately, as within Nine Months, Arraigned and Pronounced the *Scots* to be Notorious Rebels, and had, with Vehemence, preſſed the *Chaſing them, as ſuch*, out of *England*. The **Inviting** Lords and Commoners, therefore, ſuſpecting the Deſign, ſpared no Endeavours or Inſinuations, nor even Parliamentary Addreſſes (but in vain) to prevent the Journey.

My Lord *Clarendon* ſays, *The* **Inviters** *unexpected Paſſion and Importunity, to hinder the Journey, was not well underſtood; neither was the Ground of his Majeſty's ſo Poſitive, and Unalterable Reſolutions, of going thither, ſufficiently Clear to Standers-by*; However, the **Inviters** procured a Committee of Parliament; to wit, Mr. *Hampden*, and Sir *Philip Stapleton*, Clarendon, Vol. I. 279.

to be ſent to take Care, that *Wariſtoun* ſhould be kept Stable, and never to part with the Original **Invitation**.

In this Place, to the Intent to make the future Proceedings intelligible, it is proper to take Notice, That in *Ireland*, there was a Nobleman (the Earl of *Antrim*) of the Popiſh Religion, who was Chief of the great Clan of *Mac-Donnells* in *Ulſter*, whoſe Paternal Fortune was great, and made much greater by his Marriage with the Dowager of the late great Duke of *Buckingham*; this Earl's Grandeur had the Addition of being one of the Queen's Principal Favourites: My Lord *Clarendon* gives him this Character, *He was a Man of exceſſive Pride, always inſeparable from the higheſt Ambition, which tortured him with an Imagination*, That his Quality and Fortune intitled him to a Sort of Supreme Power, over the *Iriſh Roman* Catholicks, and made him deſire to appear ſo conſiderable in that Kingdom, that he might be looked upon, as a greater Man than the Earl of *Ormonde*; *his Popiſh Clan was, doubtleſs, in Numbers, and Powers, ſuperior to the other Clans of the* Oneals, Macguires, *and* Mac-Mahones, in *Ulſter*.

Clarendon, Vol. II. 607.

Vol. III. 98.

SECT. LXIV.

THE King, and his Miniſters, being at *Edinburgh*, in *September* 1641. and Expoſtulating with the moſt conſiderable Men about their late Invaſion, Diſcovered (as was Alledged) the whole Meaning of that Incurſion, (to wit) That many who were now the Active and Leading Men in both Houſes of the *Engliſh* Parliament, had **Invited and Sollicited** the *Scots* to invade *England*; and moreover found (as was affirmed) ample and full Evidence to prove the Facts: Who thoſe Diſcoverers were (beſides Lord *Savile*) continues in Obſcurity; but the Noble Hiſtorian *ſeems to point* out the Principal; who, from the Puniſhments, with which the *Rage* of the Leading Men, Diſtinguiſhed him, may be gueſſed to be the Lord *Montroſſe*; however, the King could prevail no further with *Wariſtoun*, than to make ſome faint Promiſes, to follow his Majeſty into *England*, and bring with him the Original Engagement.

Vol. I. 298.

Upon this, the King's Miniſters being filled with Reſentment, to ſee their Maſter ſo Circumvented, by a Contrivance, that was in the Actors (as they alledged) plain and poſitive Treaſon,

ſon, within the expreſs Letter of the Satute of Treaſons of the 25th *E.* III. *cap.* 2. and conceiving his Majeſty *ſufficiently Powerful* to execute Juſtice, they reſolved to inflict condign Puniſhments. The Miniſters reflected on what thoſe Men had bereaved them of, *viz. His Majeſty's* **ſole Monarchical** *Government; by which they might, as they had done, Rule without Interruption*; they alſo recollected, *How his Majeſty had been brought to give the Royal Aſſent, to Acts reforming ſo many Inſtances, of illegal Government, as amounted to a Self-Conviction.*

The King's Miniſters therefore, in Order to Effect their Deſigns in *England*, and to prevent any Diſturbance from *Scotland*, adviſed his Majeſty, to gratify the *Scots*, in all the Conceſſions which they themſelves required; and, accordingly, his Majeſty, in Perſon, gave the Royal Aſſent to Acts, whereby their **Invaſion** of *England*, with an Army, was *Juſtified*, Clarendon, Epiſcopacy *Aboliſhed*, the Liturgy and Canons Taken away, Vol. I. 308, Presbytery *Eſtabliſhed*, and the Church Lands and Tythes were confirmed to the Patentees, and Poſſeſſors; and to Acts whereby the Act of 1633. before mentioned, was reſcinded; and to an Act, whereby the Parliament was impowered, to appoint all Officers, Civil and Military, and to nominate a Committee of Council, who ſhould have Power, in the King's Abſence, and in the Intervals of Parliament, to exerciſe the Regal Authority, and even to Call, and Preſide in Parliaments: His Majeſty raiſed many of the *Scots* to Honours and Dignities, and, in ſhort, granted all that the *Scots* Deſired or Required, and even parted with, or gave away his *Sovereignty*, inſomuch, That at his Vol. I. 309. Majeſty's Departure, the Common Voice of *Scotland* was, *That a Gracious King, left them a Contented People.*

309.

Theſe Proceedings were ſo condeſcending, and ſo much beyond the *Scots* Expectations, and ſo unmerited by them, having been ſo very lately Treated as **Rebels**, that they themſelves were even tranſported; and therefore *concluded* there muſt be ſome ſecret Meaning, that lay at preſent Concealed.

SECT. LXV.

BUT about this Time, *October* 1641. There fell out *Two Occurrences* which Embaraſſed the Miniſters, and cauſed great Diſtractions and Confuſion.

The

The firſt was the Rumour of a Conſpiracy at *Edinburgh* (whilſt the King was there) to take off, by foul Means, the Marquiſs of *Hamilton*, and the Earl of *Argyle*, which Earl had been an Active Manager in the late Invaſion, in *Auguſt* 1640. and it is undoubtedly true, according to Lord *Clarendon*, That Earl *Montroſs*, privately propoſed to the King, and undertook himſelf, *to make them both away*; and no doubt *Wariſtoun* was to have kept them Company: This every one concluded he Dared not, if he had not known, that the Mind of the Government, laboured with **Revenge** againſt thoſe, by whom that Invaſion was procured; which Rumour ſufficiently Alarmed, and even frighted the *Engliſh* **Inviters** at *Weſtminſter*.

Clarendon, Vol. I. 298.

The Second of theſe Occurrences, was, *That upon* Saturday *the* 23*d of* October 1641. *A ſudden Inſurrection broke out in* Ireland, *as barbarous and horrible, as in any Nation ever happened; for almoſt the whole Body of Proteſtants were, by the Papiſts, in a cruel and perfidious Manner,* **Maſſacred**: *In which Carnage, the Women, Children, and Sucklings were, without Mercy, Murdered.*

Theſe Conjunctures, that is, theſe two Occurrences, occaſioned many Speculations (in thoſe Times, called Fears and Jealouſies) as if the *Iriſh Conſpiracy*, had been before hatched at *London*, to give the King a Pretence, to raiſe an Army, to Carry on his Deſigns in *England*.

SECT. LXVI.

THE Parliament, according to their Adjournment, Reaſſembled on the 20th of *October* 1641. and under the Influence and Fears which the Rumour from *Scotland* had created, and having amongſt them many Members, who had **Invited** and Sollicited the *Scots* Invaſions; they, on the 22d of *October* 1641. ordered the *Middleſex* Trained-Bands, to attend them as Guards.

The Inviting Members in the Houſe of Commons, being well Apprized of what the King had been doing in *Scotland*, and with what Purpoſes his Majeſty was returning to *Eng-*

England, viz. To cut many of them **ſhorter by the Head**, *and as the Conſequence, to unravel all that had been done, whereby the* Engliſh *Liberties were recovered*; they therefore reſolved, to be before-hand with the King, and to Blemiſh his Credit, before his Majeſty could attack theirs.

The **Inviters**, therefore, on the 22d of *November* 1641. brought in the famous Remonſtrance, and got it paſſed (though with Difficulty) through the Houſe of Commons, in which they did, with great *Aſperity*, recite, and ſet in Order, moſt of the Evil and Illegal Inſtances, that had been perpetrated, during his Majeſty's whole Adminiſtration, and in which the *Scots Invaſion* was, with Care, inſinuated, as a Matter of *Neceſſity*, and of great and good Importance; and they did not omit to illuſtrate, what Great Things they themſelves had atchieved, towards retrieving the Antient Conſtitution; and this was, doubtleſs, done with an Intention to obviate and encounter the King's intended Proſecution.

SECT. LXVII.

THE King being well furniſhed with Matter, for Treaſonable *Accuſations*; returned, on the 25th of *November* 1641. from *Scotland* to *London*, where he was received with uncommon Demonſtrations of Affection; but the very next Day, his Majeſty *ſaluted* the Parliament, with a Diſcharge of their Guards; and, moreover, appointed others of the Trained-Bands (in whom his Majeſty could better confide) to *guard* the two Houſes: Which the Houſe of Commons reſenting as an Invaſion of their Freedom, in like Manner *Diſcharged*. Clarendon, Vol. I. 323.

But the Commons, at the ſame Time, Petitioned the King, for a *Guard*, in whom they could confide, which his Majeſty abſolutely **Denied**; and thereupon the Commons ordered Halberts to be brought into their Houſe, to be uſed (if Occaſion required) in their own **Defence**.

On the firſt Day of *December* 1641. a Committee of Parliament preſented to the King (as their Salutation) the *Remonſtrance*, with a ſuitable Petition, to put in Execution ſome Matters therein pointed at, as convenient Steps to future good Proceedings; but the *Meaning* was obvious; for their *Heads*, and

the Conſtitution being at *Stake*, it was no ſmall Advantage to be firſt in the Clamour.

SECT. LXVIII.

THE King, although his grand Deſign was, by the croſs Circumſtances before related, much weakened, yet apprehending that *Multitudes* of People (eſpecially in the Northern Parts) would approve and ſupport the Proſecution of ſuch *Treaſons*, as Calling in Foreign Forces, to make War upon the King's Miniſters; his Majeſty perſiſted in his Reſolution, to proceed, in Order to gain the Ends before aimed at; and having cauſed an *Impeachment* for High-Treaſon, to be prepared, and ingroſſed in Paper; his Majeſty, with his own Hand, Delivered the ſame to Sir *Edward Herbert* his Attorney-General, Commanding him, to Exhibit them into the Houſe of Peers, and, in his Name, to Impeach, for High-Treaſon, Five Members of the Houſe of Commons, *viz. Denzill Holles*, Sir *Arthur Haſlerigg*, *John Hampden*, *John Pym*, and *William Strode*, and one Lord, the Lord *Kimbolton*, Son and Heir Apparent of the Earl of *Manchester*, who had been, by Writ, Called up to the Houſe of Peers: The Subſtance of which Impeachment was;

Clarendon, Vol. I. 557.

I. *That they had Endeavoured to ſubvert the Fundamental Laws and Government, to deprive the King of his Regal Power, and to place in his Subjects an Arbitrary and Tyrannical Power.*

II. *That they had, by foul Aſperſions upon his Majeſty and his Government, Endeavoured to alienate the Affections of his People, and to make his Majeſty odious.*

III. *That they had Endeavoured to draw his late Army into Diſobedience to his Command, and to ſide with them in their Traiterous Deſigns.*

IV. *That they had Traiterouſly* Invited *and Encouraged a Foreign Power to invade his Majeſty's Kingdom of* England.

V. *That they had Traiterouſly Endeavoured to Subvert the very Rights and Beings of Parliament.*

VI. *That*

VI. *That they had, by Force and Terror,* Compelled *the Parliament to Joyn with them in their Traiterous Deſigns, and to that End, had actually Raiſed and Countenanced Tumults, againſt the King and Parliament.* And,

VII. *That they had Traiterouſly Conſpired to Levy, and had actually Levied, War againſt the King.*

The King, and his Miniſters, had concerted this Impeachment, and the Carrying it on with Vigour and Reſolution; for at the ſame Time as his Majeſty delivered the Impeachment to his Attorney General, *Warrants* were alſo delivered, Signed with the King's own Hand, *viz.* One to two Gentlemen, to Seize, and Seal up, the Studies, Trunks, and Papers, of the Five Members, whilſt they were attending the Service of the Houſe; and another to a Serjeant at Arms, to Demand and Arreſt the Impeached Members.

All theſe Steps were made on the ſame Day; for on *Monday* the 3d of *January*, 1641, the Attorney General Exhibited the Articles of *Impeachment*, in the Houſe of Peers; and the Houſe of Commons Received a Meſſage thereof from the Lords, at the ſame Time as they Received Information, That the Studies, Trunks, and Papers, of the *Impeached* Members, were Seized, and Sealed up; and at the ſame Inſtant, Mr. *Francis*, the Serjeant at Arms, came to the Houſe of Commons, and declared his Meſſage from the King, to this Effect, *viz.*

By the King's Command, I do Require of Mr. Speaker, Five Gentlemen, Members of this Houſe, whom being delivered to me, I am, by his Majeſty's Command, and in his Name, to Arreſt for High Treaſon; their Names are, Mr. Holles, *Sir* Arthur Haſlerigg, *Mr.* Hampden, *Mr.* Pym, *and Mr.* Strode.

The Houſe being, by theſe Proceedings, put into an unſpeakable *Conſternation*, and the Serjeant at Arms being ordered to Withdraw, they Voted and Ordered, *That the Five Members might Reſume, and Break open their own Studies, and Trunks, and Recover their Papers; and that if any Perſon Attempted to* Arreſt *any of their Members, without the Orders, or Leave, of that Houſe, ſuch Members might Stand upon their* Defence, and make Reſiſtance.

The

The Houſe appointed Four of their Members to Attend his Majeſty, and Acquaint him, *That they would take his Meſſage about Delivering up their Members* (*which*, they ſaid, *concern'd the Privilege of Parliament, and of all the Commons of* England) *into Conſideration, and would Attend his Majeſty with an Anſwer, as ſoon as the Importance of the Buſineſs would permit*; *and that, in the mean Time, the Five Members ſhould be ready to Anſwer any Legal Charge made againſt them*; and accordingly the Houſe ordered them to Attend in their Places the next Day, at One of the Clock, and ſo *de Die in Diem.*

After this, the Serjeant at Arms (who waited at the Door a long Time) was called in, and told, *That the Houſe would ſend to his Majeſty an Anſwer, by Meſſengers of their own.*

In the mean Time, this *Impeachment* ſeemed (as the Parliament Apprehended) to Carry towards the late Acts of Parliament, and the Manner of obtaining them, by the Influence of the *Scots* Invaſion, an Aſpect Angry and Revengeful; for it was, in a great Meaſure, framed after the Model of the *Impeachment* of the Earl of *Strafford*: It was alſo Preſum'ed and Argued, That the King meant theſe Things, *viz.* That by the actual *War*, Levied againſt the King, was meant, the *Scots* Invaſion; and that that War had Neceſſitated his Majeſty's Calling a Parliament, and had Enabled It to Impoſe, and Forced his Majeſty to Paſs, thoſe Acts, that had not only *Subverted* his Majeſty's former Government without Parliaments, but had Deprived him of thoſe Powers to Impoſe Taxes, Impriſon his Subjects, and Exerciſe Martial Law, *&c.* which his Miniſters called Legal Prerogatives: That by the Words *Foul Aſperſions*, were meant, the many Male Adminiſtrations Recited in the Preambles of thoſe Acts; and that, therefore, this Proſecution was Levelled at the Original Offenders; to wit, Not only the Five Members, but all the reſt who had *Sollicited* that Invaſion; But what was meant by placing in the Subjects an Arbitrary and Tyrannical Power, by Subverting the Rights and Being of Parliaments, or the Compelling Parliaments by Force and Terror, to Join in Traiterous Deſigns, was Obſcure, and wholly Unintelligible; and, in the main, the whole Impeachment (except the 4th Article) was ſmil'd at, as Chymerical, and as having, in Truth, no Foundation.

And

And as to the Fourth Article of the Impeachment, Multitudes of Lords, of whom the Earls of *Eſſex*, *Warwick*, *Bedford*, *Clare*, *Bolingbroke*, *Mulgrave*, *Holland*, and the Lords *Say*, *Brook*, and *Kimbolton*, were reputed to be, and many Commoners were (in all Probability) Involved in the ſame Predicament of the **Invitation**: This was the Original Offence, which nothing, but an intire Deſtruction of the Inviters, could Expiate, becauſe, without it, no Recovery of the former unlimited Power, could be expected: But the Two Houſes had Sentiments of Treaſon, quite different from thoſe of the King's Miniſters. They Retorted, That the Facts Committed by the Miniſters, as they are Stated and Remembred in the Remonſtrance, appeared to be Treaſons of a moſt pernicious Nature; for by them it appeared, that the whole Conſtitution was **Subverted**, and the Fundamental Form of the Government **Changed**, from a Limited, to an Abſolute, Monarchy, and all Mens Liberties, Properties, and Freeholds, *Invaded* and Subjected to Arbitrary Will and Pleaſure.

SECT. LXIX.

IT was, at this Conjuncture, inſiſted, That it was Lawful for the Subjects, by Virtue of the Statutes of 11 *R.* II. and 1 *H.* IV. *cap.* 4. to Raiſe Forces, and **Diſturb** the Miniſters of Arbitrary Power; which two laſt Acts of Parliament, being made within 34 Years after the Statute of Treaſons, of 25 *E.* III. are therefore an *Explanation* of it, and plainly ſhew, That the *Diſturbance* of Arbitrary Power, is not a Levying War againſt the King, or Adhering to his Enemies, within the Intention and Meaning of the Statute of 25 *E.* III.

It was Argued, *That if the* Diſturbance *of the Miniſters of Arbitrary Power, to Remove the preſent, and prevent future, Slavery, were Lawful, then it muſt conſequently be Lawful to* **Invite**, *and Procure, the* Scots *Forces, to aſſiſt them ſo to do; for there could be no Difference in the* **Diſturbance**, *whether it were done by* Engliſh, *or* Scots *Forces.*

It was urged, *That the* Scots *Forces did no more than* Neceſſitate *the Aſſembling a Free Parliament; That the preſent Parliament owed their Sitting and Freedom, to that* Neceſſity:

The Fruits whereof were, *That Arbitrary Power was* Diſturbed *and Removed*; *That all Men were Reſtored to their Rights, Liberties, Properties, and Freehold*; *and that ſome of the Authors of their Grievances and Oppreſſions, were brought to Puniſhment*: *That the* Scots *Invaſion was, by an Act lately Paſſed in the Parliament of* Scotland, *Juſtified, and their Army were, for their Trouble and Hazard, virtually* Thanked *by a liberal Payment, in which the King himſelf had Joined*; *and that it was a Lame and* Cold Scent, *to Charge on thoſe* Inviting *Patriots, the Crime of Treaſon, for procuring all thoſe State Amendments, in Relation to Liberty, Property, and Free Parliaments*: And, moreover, *That the* Invitation *of the Invaſion was, by a neceſſary Implication* Juſtified, *ſince the* Invaſion *itſelf had been in* Scotland *Juſtified.*

Theſe were Arguments, and ſtrong ones; but it was well enough underſtood, *That whoever had the Power, would Dictate and Determine the Treaſon, and would Interpret* (to ſerve their own Purpoſes) *the Statutes and Laws relating to it.*

To *Illuſtrate* which, it may not be Improper to Suppoſe, or Preſume, what might have been the Proceedings in this Caſe, and the Event of them, if the Five Members had been made Priſoners, *viz.* Suppoſe the King ſhould (as afterwards he ſaid he would) Wave this Method of Impeachment, and Proſecute the Five Members, in an unqueſtionable Way: That is, Suppoſe his Majeſty had Iſſued out a Commiſſion of *Oyer* and *Terminer*, and had thereby Authorized the very **Malefactors**, who had Adviſed and Given Judgment, in the Caſe of Ship-Money, and had Adviſed and put in Execution, thoſe other Inſtances of an Arbitrary Government, which, in the Preambles of the Acts of this Parliament, are Recited and Declared to be **Arbitrary** and Illegal: I ſay, Suppoſe theſe Men had been appointed *Judges* to Try the Five Members, would not ſuch a Set of Commiſſioners have been Judges in their *own Cauſe*?

And let it be ſuppoſed, That the King's Articles of Impeachment, had been turned into a Bill of Indictment, *viz. That the Five Members had Traiterouſly* **Invited** *and Sollicited the* Scots *to Raiſe an Army, and Invade* England, *promiſing, if Occaſion required, to Joyn and Aſſiſt them, and that the* Scots, *in*

in Purſuance of that **Invitation**, *did Invade, and make* **War**, *in* England.

And let it be for once imagined, That to this Indictment, the Five Members had made this *Defence*, by Way of Plea to the Juriſdiction of the Court, *viz. That certain Evil Counſellors, Miniſters and Judges, had Traiterouſly conſpired, adviſed, and aſſiſted in the* **Subverting** *and Changing the Fundamental Form of this Government, from a limited to an abſolute Monarchy, and in the extirpating the Liberties and Freedom of* Britain ; *and, in the Room thereof, had introduced and ſet up an* **Arbitrary** *Power in the Prince* ; *and that as Overt-Facts of thoſe Treaſons, thoſe* Malefactors *had conſpired, adviſed and aſſiſted in the making, and rendering the King Maſter of all Mens Properties and Freeholds, by Impoſing Taxes, and Levying the Ship-Money, under the Pretence of Regal Authority, and had joyned and aſſiſted in the general Oppreſſion, under the Arbitrary and Illegal Proceedings of the Star-Chamber, the High Commiſſion Court, the Council-Table, and in the Impoſing Knighthood, and Fining ſuch as had refuſed to accept that Order : and, above all, had conſpired and adviſed the Invading and ſubverting the Hereditary Rights, Powers, and Privileges of the two Eſtates of Lords and Commons, by laying aſide the Aſſembling Parliaments* ; *and that they the Five Members, in Conjunction with other Patriots* (after all other Means had failed, and when nothing but the laſt *Neceſſity* could prevail) *had* **Invited** *in their Neighbours the* Scots, *not to make War upon the King, or hurt his Legal Government or Rights, but to aſſiſt them in Diſturbing and Removing thoſe Evil Miniſters, and the* Arbitrary **Preſſures and Sufferings** *under which the People languiſhed, and to recover and reſtore to the Two Eſtates of Lords and Commons, thoſe Antient and Hereditary Rights, Powers, and Privileges, which they, by the Original Conſtitution, were intituled to, and, in general to retrieve the Freedom, Freeholds and Liberties of* Britons ; *and that all theſe Good and Deſirable Things, had, by ſuch their* **Invitation**, *and by the* Scots *Invaſion, been happily and Legally compaſſed and effected, and the Nation's Grievances, in a great Meaſure, redreſſed* ; *and that the like Doings had been* Juſtified *and Declared Lawful and Commendable by King* John's *Old* Magna Charta, *and by the Statutes of* 11 R. II. *and* 1 Hen. IV. cap. 4. *and that therefore the Matter of this Proſecution, in Regard it Concerned the higheſt Points and Queſtions*

Queſtions of State, was above the Cognizance of this Court of Oyer and Terminer, *and for that Reaſon was cognizable only, and ought to be adjourned into Parliament, to be there Debated and Determined, according to the Reſervation in that Behalf made, in the Statute of Treaſons.*

SECT. LXX.

SUCH a Defence as this, would, in all Probability, have appeared to many *Britons*, Juſt, Reaſonable, and Legal; but in the ordinary Courſe of Juſtice in inferior Courts, and eſpecially before ſuch Commiſſioners, as were, in Fact, the real **Authors**, Adviſers, and Parties in the ſeveral Articles of Miſgovernment complained of, and ſo were Judges in their own Cauſe; **ſuch a Defence** would rather *Irritate* the Judges, than *Juſtify* or Excuſe the Priſoners: It's not to be Queſtioned, but the Judges would have Rejected, and Over-rul'd the *Defence*, and told the Priſoners, *That the Court had a ſufficient Juriſdiction and Authority, to Hear and Determine the Offences charged; and that therefore there was no Occaſion to Adjourn into Parliament the Matters in Queſtion*; and, moreover, the Court would not fail to reprimand the Priſoners, by telling them, *That they*, the Judges, *did not ſit there to hear the Government Arraigned, or themſelves charged with Incompetency of Juriſdiction, or Impeached with Miſdemeanors*; And would further Acquaint them, *That the Jury would try the Truth of the Facts Charged* (if they were Denied) *and if thoſe Facts were, by the Jury, found to be true, or were, by the Priſoners Confeſſed*, the Court had nothing more to do, but to give Judgment; *That the* **Invitation** *of Foreign Forces, was a Levying* **War** *againſt the King's Perſon, and an Adhering to his Enemies, according to the Statute of Treaſons; and that as to the Statutes inſiſted on, they knew nothing of them, neither would regard them.*

This, or ſomething like this, would, undoubtedly have been the Caſe of the Five **Inviting** Members, and others that joined with them, had they been made Priſoners.

From which Premiſes, it obviouſly appears, how incompetent Inferior Courts are, to try ſuch Points, and Queſtions concerning the State, or the Conſtitution, or the Legiſlature, as Depended

pended between the King and the Five Members; and that therefore the Parliament only, ought to have the Cognizance in their Inquiſitive, Declarative, and Judicial Capacities, to enquire into the Nature of the Crimes Charged, and to *Declare*, whether the ſame, according to the Conſtitution, were Crimes, or Lawful and *Neceſſary* Efforts, made to Recover, for the two Eſtates of Lords and Commons, their Hereditary Rights and Privileges, from which they had been ſo long Excluded, and to Reſcue *Britons* from under their **Preſſures and Sufferings**: I ſay, Theſe were Points and Queſtions, fit only, to be Debated and Determined in Parliament, and not elſewhere, becauſe the King's Miniſters were too much concerned: However, the Concluſion is plain, That this *Impeachment* Raiſed in the Minds of the Five Members, and all others concerned in the *Invitation*, not only Deſperation, but the moſt Indefatigable Activity, to **Defend** themſelves.

SECT. LXXI.

BUT to Return to the Proceedings, from which this Digreſſion hath Deviated:

It was manifeſt from the Steps made by the Houſe of Commons, in Relation to the Grand Impeachment, That they Reſolved to Proceed with Coldneſs, and in a Parliamentary Method, to Examine the whole Matter, touching the Treaſons in the Seven Articles ſpecified, and Conſider firſt, whether the **Invitation** of the *Scots*, for the Purpoſes aforeſaid, was, according to the Conſtitution-Standard, *Treaſon*, or not; and next, whether there were any *Evidence* ſufficient to Affect the Members Impeached, before they would Impriſon, or Deprive them of their Seats in Parliament; and in the laſt Place, whether the ſubſequent Proceedings had not Cleared the Invitation of all Imputations; But this Sort of Proceeding, had one untoward View, as it tended to Unravel and Expoſe the *Secret Aim and Meaning* of his Majeſty's Journey to *Scotland*, and to prove his Diſcontent, with the Conceſſions before mentioned.

The Torrent of the Miniſters Thoughts, being fixed on this Proſecution, and their whole Deſign (upon which much depended) being upon the Point of Diſappointment, the Miniſters

grew more and more Enraged, inſomuch, that they Adviſed his Majeſty, *To take a ſudden and ſecret Reſolution, to go with a Competent Force to the Houſe of Commons, and in Perſon to ſee the Five Members Arreſted*; and, accordingly, forgetting all Parliamentary Privileges, and the Conſtitution by which they were Inſtituted, his Majeſty, on *Tueſday* the 4th of *January*, 1641, Attended with an Armed Power, *viz.* Not only with his Yeomen of his Guard, and Band of Penſioners; but with a great Number of Armed Gentlemen (who having ſerved in Foreign Wars, had been Disbanded) did cauſe a haſty Knock to be made at the Door of the Houſe of Commons, and did Enter, to *Seize* and Impriſon the Five Members; but They, having private Notice, did, in the very Article of Diſtreſs, Withdraw, and Fly into the City.

Clarendon, Vol. I. 558.

This unprecedented Attempt, was Carried on with ſome Extraordinary Circumſtances, *viz. The King, when he came into the Houſe, required the Speaker to come down, and himſelf Stept up into the Chair, and having ſpent ſome Time in Looking about and Inquiring for the Five Members, and not finding them, his Majeſty Declared to the Houſe, the* Cauſe *of his Coming, and his Reſolution to Seize thoſe Members, where-ever he could find them.* And,

During this Time, the Armed Gentlemen Attended at the Door (which, contrary to the Uſage, was all this while kept open) from whence it was Argued, That the whole Iſſue of this Enterprize, was put upon this *Dilemma, Either the Houſe would* Submit, *and Deliver up the Impeached Members, and in that Caſe, the King would Carry his Point Gloriouſly, and make a moſt uſeful Precedent*; or elſe, *The Houſe would* Refuſe, *and not Comply, and, probably, their Halberts before mentioned, might be uſed in their own Defence*; and in that Caſe, the Armed Gentlemen were at Hand, to Enter the Houſe in a Military Manner, which might, perhaps, have been the Caſe, if the Five Members had not Eſcaped, as it were, out of the Jaws of the Ripe and Victorious Danger.

SECT.

SECT. LXXII.

THE Commons, on the next Day, the 5th of *January*, 1641, Voted the King's *Entry* of their Houſe, to be done in a *Warlike Manner*, and therefore They, in great Fear, Trouble, and Confuſion, Adjourned for Seven Days, 'till *Tueſday* the 11th of *January*, 1641, but appointed a Committee to Sit, in the mean Time, at one of the Halls in the City, and all that came, to have Voices.

The King's Miniſters Adviſed, and accordingly his Majeſty went, the next Day, to the *Guildhall* of the City, and there Declared to the Citizens, *That he came to Demand Five Impeached Members, who Shrowded themſelves in their City*; and Repeated his Reſolution to **Arreſt** them, where-ever they could be found; and afterward, Iſſued out Warrants to Arreſt them, Subſcribed and Signed with his own Hand; and on *Saturday* the 8th of *January*, 1641, a Proclamation was Publiſhed, Commanding all Mayors, Sheriffs, *&c.* to Arreſt and Impriſon the Five Members.

SECT. LXXIII.

THIS Freſh, and Unaccountable *Violation* of the Commons Privileges, was, even to the Common People, ſo Apparent, that all Men became Affected, and, as it were, **Wounded**, with this War-like Aſſault of their Liberties, in the Perſons of their Repreſentatives: It was thereupon Argued, *That if the King, Attended with Armed Gentlemen, might Enter the Houſe of Commons, and Seize the Members, he might* **Commiſſion** *a Captain of Dragoons ſo to do, and might Order whom he would, to be Excluded, and whom he would he might Impriſon, for pretended Offences, in what they ſhould Do, or Say, within thoſe Walls.*

It appeared alſo, *That if the Five Members Attempted again to Sit, the King, or his Men at Arms, would be at Hand to come and Seize them, and that, therefore, without Guards, They, or the Houſe, could never more Sit ſafely*; And, if ſo, the Inference is Inconteſtible, that this Storm on the Houſe, was the

the **First Stroke** that was given in the War, which, from this Time, grew Active and Vigorous.

The Five Members, being conſidered as **Sufferers** in the Cauſe of Liberty, found Numerous Adherents; for the Citizens of *London*, and even the Mariners in the River, Reſolved, *That as the Members were, as they alledged, in a War-like Manner Invaded, and Driven from the Houſe; ſo they would, in a War-like Manner, bring them Home, and ſee them Reinſtated, and moreover, become their Guards*; which they, on *Tueſday* the 11th of *January*, 1641, with Long-Boats, Guns, Flags, *&c.* (after the Manner of a Navy) Sailing from the *Three Cranes* in the City, to *Weſtminſter*, performed with a Pompous and Daring Intrepidity.

SECT. LXXIV.

THE King being not able to ſee the Five Members ſo generally Eſpouſed, and himſelf, and his Proſecution, ſo Diſreſpected, did, on the Day before (*Monday* the 10th of *January*, 1641,) Retire from *Whitehall*, to *Hampton-Court*, and after that, to *Windſor*, and from thence to *York*, and *Abſented*, and never after would Return to his Parliament.

Here it may be obſerved, *That the Houſe of Commons were, ever after, obliged to Stand upon their own* **Defence**, *and to Provide themſelves with* Guards, *to prevent the like Surprize; and the rather, ſince it was found, that the Lieutenant of the* Tower *had, on the 4th of* January, *being the very Day on which the King* Entred *the Houſe, ſent privately to* Whitehall, *One hundred Arms, Two Barrels of Powder, and Match, and Shot, proportionable.*

Ruſhworth.

SECT. LXXV.

IN this Poſture of Affairs, the Miniſters (as may, without Injury, be preſumed) held ſecret Councils with the Queen at *Windſor*, which were Guided by her Popiſh Cabal; for the *Nuncio*, and the Prieſts, ſatisfied the Queen, and ſhe the King; and that thoſe Councils produced theſe Reſolutions; (for many Reſolutions

lutions were then privately taken, as the Noble Hiſtorian, as alſo *D' Orleans*, aſſure us, *viz. That the Treaſon of the* **Invitation** *ſhould be Proſecuted with* War, *and Force of Arms*; And for that End it was concluded, *That the Queen (under the Umbrage of Conducting her Daughter, the Princeſs* Mary, *lately married to the Prince of* Orange, *to her Husband) ſhould take that Opportunity to Tranſport herſelf into* Holland, *and, at the ſame Time, Negotiate and* Sollicite Foreign Potentates for Aſſiſtance, *and Supplies of Men, Money, and Arms, in order to an Amendment of the Affairs in* England; *and that the King ſhould Retire into the* North, *and there make his firſt Levies, and never come to any Accommodation with thoſe* **Inviters**, *but* ſhould, in the mean Time, until the whole **Alteration** ſhould be **Framed**, *proceed ſlowly, and allow Time for Negotiation, and ſecure ſome Place of Strength* (meaning firſt *Hull*, which was the *ſole Motive* of his Journey into the *North*, in order to get the Magazine of Arms, and a good Harbour, to Receive Auxiliaries from Abroad, and that in Caſe of Diſappointment, his Majeſty ſhould go into *Ireland*) *and wait the Event of the Queen's Foreign Negotiations; and that, in the Interim, his Majeſty ſhould* Temporize *and Deny all Particulars, that could poſſibly be Denied the Parliament.*

The Noble Hiſtorian is pleaſed to ſay, *That the moſt precious Balm of the Crown, was neceſſary to be applied to the Rancour of the Times*; but what the **Alteration** was to be, and by what Means, or Power, it was to be *Framed*, and Effected, he was pleaſed to be Obſcure in, and to add, *That the latter Part of the Reſolution, concerning what the King was, on his Part, to do, was Concealed, and Communicated to very few.* Clarendon, Vol. I. 308.

SECT. LXXVI.

THE Diſcovery of theſe Meaſures, put the Active Members into great Fear and Anexiety; for when they pondered the Weight of the Regal Power, and the Queen's Activity in Solliciting Neighbouring Potentates for Foreign Forces, it appeared, they had nothing ready, either to *Defend* themſelves, or to *Oppoſe* againſt thoſe Powerful Efforts, in caſe they ſhould be ſuddenly *Puſhed*; for *War*, or a Trial by Battle, was frightful to thoſe People, whoſe Hands, and Purſes, were abſo-

lutely neceſſary, to Enable each Party to Engage in an Encounter, that muſt needs be Bloody and Calamitous.

The Matter and Legality of the **Invitation**, was the Grand *Queſtion* to be Tried; but the naked Truth was, nevertheleſs, by both Sides Couched and Covered from the People, becauſe if it had been plainly known and underſtood, That the King Proſecuted the Active Members for that **Invitation**, the Conſequence would be, That the King Apprehended, the **Neceſſity** of Aſſembling this Parliament, had been Impoſed on him by the Force and Violence of the *Scots* Invaſion, and that he endeavoured, for that Reaſon, to *Diſanul* all the Acts and Laws that paſſed in the laſt Seſſion: On the other Hand, If it had been plainly known and underſtood, That the *Invitation*, and Sollicitation of the *Scots* Invaſion, was the Real *Offence* for which the Active Members were proſecuted, it would fall too much within the Compaſs of every Man's Underſtanding, to Debate the Legality of that *Invitation*, whether the ſame was, or was not, a Levying War, and Adhering to the King's Enemies, and ſo was, or was not, High Treaſon.

SECT. LXXVII.

THE Grand Queſtion, therefore, touching the Legality of the **Invitation** being kept in View, it is material to obſerve how the King and Parliament, between the 4th of *January*, 1641, and the 22d of *Auguſt*, 1642 (when his Majeſty ſet up his Standard at *Nottingham*, being Seven Months) Waged a Paper War, by Declarations, Meſſages, Anſwers, and Replies, Containing Arguments, Invectives, and Menaces, in which many Important Parts of this Conſtitution, and of the Fundamental **Form** of the Government in this Nation, were Opened, Exhibited, Litigated, and Diſcuſſed; the **Subſtance** whereof, is here Extracted principally from the Lord *Clarendon*, who hath Related thoſe Matters, more Learnedly, and Impartially, than any other Hiſtorian.

The Popular and Plauſible **Queſtions**, and Arguments, which were made Uſe of, to Exerciſe and Engage the People, may be termed, **Debates** between the King and his People, during his Majeſty's Abſence from his Parliament, which were Raiſed and Built upon theſe Matters of Fact, *viz.*

I. *Touching*

I. *Touching the Power and Influence of the Queen, and the* Nuncio, *and her* Romiſh *Dependants, over the Councils and Reſolutions of the* **State** *and Government.*

II. *Touching an Attempt Pending Lord* Strafford's *Trial, to bring up the* Army *in the* North, *to* **Awe** *the Parliament, and to* Reſcue *that Lord, and ſet him at the Head of the* Iriſh *Army; and whether the King was Privy to that Deſign, or not.*

III. *Touching the* **Iriſh Maſſacre** *and Rebellion; And whether the ſame were Framed and Contrived in* England, *and Favoured or Countenanced by the Queen, or not, and the Reaſons for, and againſt, that Queſtion.* Clarendon, Vol. I. 461.

IV. *Touching the Taking away the Biſhops Votes.*

V. *Touching the Powers and Privileges of Parliament in General.*

VI. *Touching their particular Privileges, in Relation to the Impeachment of the Lord* Kimbolton, *and the Five Members; and whether the King's going in Perſon, Attended with* Armed Gentlemen, *to the Houſe of Commons, and his Entry thereof, to Seize the Five Members, was a Violation of their Privileges, or not:*

Upon this Problem, *That if there were no Privilege, in Caſes of Treaſon, whether the Entry of the Houſe, to Arreſt Members Accuſed of Treaſon, be a Breach of Privilege, or not.*

VII. *Touching the Laws in General, and whether the King had,* **Before** *this Parliament, Governed by* **Arbitrary Power,** *or not; and whether he did not Reſerve in his Mind, a Reſolution to Reſcind the Acts Paſſed in this Parliament, as Steddily, as he did his Reſolution, to Puniſh the* **Invitation** *of the* Scotiſh *Invaſion, and the* Inviters *concerned in it.*

VIII. *Touching the King's* Abſenting *himſelf from his Parliament, and what Powers his Majeſty (when Separated from it) could, in his own Perſon, Execute.*

IX. *Touching*

IX. *Touching the Military Power, and particularly the Power over the Militia; and in whom that Power, by Law, Reſided; and who were to be Judges, and had Power to Declare (in that Caſe) what was the Law.*

X. *Touching the* **Propriety** *over the National Forts, Garriſons, and Magazines of Arms; and whether the King was Intitled thereto, otherwiſe than as a Truſtee for the Kingdom.*

XI. *Touching* **High Treaſon**; *and whether Sir* John Hotham's *Shutting the Gates of* Hull *againſt the King, and Denying him Entrance (which was Authorized by the two Houſes) was Treaſon, or not.*

XII. *Touching the* **Intentions** *of either Party, to make* **War** *on the other; and whether the War to be made by, or on the Part of the King, againſt the Parliament, or by the Parliament, againſt the King, were* Offenſive, *or* Defenſive.

XIII. *Touching the* **Invectives** *and Menaces, made by either Party, on the other.*

XIV. *Touching Religion, ſo far as Concerned the King's Children.*

XV. *Touching the* Application *of either Side, to* **Foreign Potentates** *for Aſſiſtance.*

All which were ſublime *Queſtions* and Debates, and were Managed on Both Sides, with great *Dexterity*, wherein the Arguments were Exquiſite, and the *Invectives* full of *Aſperity*, but without Conviction of either Party, otherwiſe than by the Sword.

SECT. LXXVIII.

I. *Debates about the Queen's Power and Influence over all the Counſels and Reſolutions of the State and Government, which alſo affected Religion; and of the Weight of that Grievance.*

The Repreſentations made by my Lord *Clarendon*, of the King's Perſonal Management, do plainly ſhew, That he was, from his Acceſſion to the Crown, conducted by the Duke of *Buckingham*,

†

Buckingham, whoſe Power, with the King, was ſo ample and intire, that he, upon a trivial *Peccadillo*, dared to expoſtulate with the Queen herſelf, and to tell her, *There had been Queens in* England, *who had loſt their Heads*; but my Lord hath ſhewed, That after the Duke's Death, all the Power centred in the Queen, of whom his Lordſhip writes thus;

The Papiſts had, for many Years, enjoyed a great Calm, being upon the Matter abſolved from the ſevereſt Parts of the Law, and diſpenſed with for the gentleſt; and were grown only a Part of the Revenue, without any probable Danger of being made a Sacrifice to the Law. They were looked upon as good Subjects at Court, and as good Neighbours in the Country; all the Reſtraints and Reproaches of former Times being forgotten. But they were not prudent Managers of this Proſperity, being too elate and tranſported with the Protection and Connivance they received: Though, I am perſuaded, their Numbers encreaſed not, their Pomp and Boldneſs did, to that Degree, that, as if they affected to be thought Dangerous to the State, they appeared more publickly entertained, and urged Conferences more avowedly, than had been before known: they reſorted at common Hours to Maſs, in Somerſet-Houſe, *and returned thence in great Multitudes, with the ſame Barefacedneſs, as others came from the* Savoy, *or other Neighbour Churches; they attempted, and ſometimes obtained Proſelytes of weak uninformed Ladies, with ſuch Circumſtances as provoked the Rage, and deſtroyed the Charity of great and powerful Families, which longed for their Suppreſſion: they grew not only ſecret Contrivers, but publick, profeſſed Promoters of, and Miniſters in, the moſt odious and the moſt grievous Projects, as in that of* Soap, *formed, framed and executed by almoſt a Corporation of that Religion, which, under that Licence and Notion, might be, and were ſuſpected to be Qualified for other Agitations. The Prieſts, and ſuch as were in Orders* (Orders that in themſelves were puniſhable by Death) *departed from their former Modeſty and Fear, and were as willing to be known, as to be hearkened to; inſomuch as a Jeſuit at* Paris, *who was coming for* England, *had the Boldneſs to viſit the Embaſſador there, who knew him to be ſuch, and offering his Service, acquainted him with his Journey, as if there had been no Laws for his Reception. And for the moſt invidious Protection and Countenance of that whole Party, a publick Agent* [Nuncio] *from* Rome (*firſt Mr.* Con, *a* Scotiſh *Man, and after him the Count of* Rozetti *an* Italian) *reſided at*

Clarendon, Vol. I. 142, 148.

London *in great Port; publickly viſited the Court, and was avowedly reſorted to, by the Catholicks of all Conditions, over whom he aſſumed a particular Juriſdiction, and was careſſed, and preſented magnificently by the Ladies of Honour, who inclined to that Profeſſion. They had likewiſe, with much Noiſe and Vanity, made publick Collections of Money, to a conſiderable Sum, upon ſome Recommendations from the Queen, and to be by her Majeſty preſented as a Free-Will-Offering from his* Roman *Catholick Subjects to the King, for the carrying on the War againſt the* Scots; *which drew upon them the Rage of that Nation, with little Devotion and Reverence to the Queen herſelf; as if ſhe deſired to ſuppreſs the Proteſtant Religion in one Kingdom as well as the other, by the Arms of the* Roman *Catholicks.*

The noble Hiſtorian, in order to ſhew the Plenitude of the Queen's Power, is pleaſed to take Notice, of the Diſhonour which accrewed, by the Terms of the *Scotiſh* Pacification in 1639. to this Effect;

Clarendon, Vol. I. 125.

The King himſelf was very Melancholick, and quickly diſcerned, That he had loſt Reputation at Home and Abroad; and thoſe Counſellors who had been moſt faulty, either through Want of Courage or Wiſdom, never afterwards recovered Spirit enough to do their Duty, but gave themſelves up to thoſe who had ſo much Over-witted them, every Man ſhifting the Fault from himſelf, and finding ſome Friend to excuſe him: And it being yet neceſſary that ſo infamous a Matter ſhould not be covered with abſolute Oblivion; it fell to old Secretary Coke's *Turn, to be made the Sacrifice; and upon Pretence that he had omitted the writing what he ought to have done, and inſerted ſomewhat he ought not to have done, he was put out of his Office, and within a ſhort Time after, Sir* Harry Vane, *by the open and viſible Power of the Queen was made Secretary of State; and this was attended again with a Declared and Unſeaſonable Diſlike and Diſpleaſure in the Queen againſt the Lieutenant of* Ireland, *newly made Earl of* Strafford; *who (out of ſome Kindneſs to old* Coke, *who had been much truſted by him, and of Uſe to him and out of Contempt and Deteſtation of* Vane, *but principally out of a Deſire to have that Miſcarriage Expiated by a greater Sacrifice) oppoſed the Removal of Secretary* Coke, *with all the Intereſt he could; got it ſuſpended for ſome Time, and put the Queen to the Exerciſe of her* full Power, *to perfect her Work.*

My

My Lord *Clarendon* writes, *That the Queen's Abſolute Power with* (or rather over) *the King, was more Diſliked, than any other* Excels *of the Court; and was looked upon, by the People, not only as their greateſt* Grievance; *but as the Root and Cauſe of all their other Grievances; becauſe the Queen, who influenced, as ſhe pleaſed, the King, was herſelf governed by her Popiſh Cabal, and, conſequently, the Kingdom was governed by Popiſh Councils.* It was not doubted, but the Queen's Councils had raiſed in the King that Reluctancy, which appeared at his Majeſty's paſſing the ſeveral Acts of Reformation before mentioned; however, this Grievance was too hard for the Parliament, and could never be removed. Clarendon, Vol. I. 167.

The Queen (as Mr. *Echard* tells us) was the principal Adviſer and Inſtigator of the King's violent Entry into the Houſe of Commons, to Seize or Arreſt the five Members; he repeats the Queen's Words, when the King diſcovered his Diffidence, *viz. Allé Poltron; Go pull thoſe Rogues out by the Ears, or never ſee my Face more.* Echard 520.

That no Argument prevailed ſo much on the King to paſs the two Acts on the 14th of *February* 1641. *viz. The one for taking away the Biſhops Votes in Parliament*; and the other, *For Preſſing Soldiers for the War in* Ireland; as the Perſuaſions of the Queen; for the Prieſts ſatisfied the Queen, and ſhe the King, which made great Men, amongſt the King's Friends believe, that Infuſion to have been made in the Queen, by her own Prieſts, by Inſtructions from *France*, and for Reaſons of State of that Kingdom. Clarendon, Vol. I. 428.

The active Members were ſo apprehenſive of the Queen's abſolute Power with the King, which was managed by her Cabal of Prieſts to ſerve their Intereſts, and who were implacable, that they concluded on a new Remonſtrance, to be made of the State of the Kingdom, in which they would preſent to the King's View, the *Cauſes* of all their Diſtractions and Grievances, and propoſe to him *Remedies* to be applied to thoſe Evils; (to wit) That the *Greateſt* of thoſe *Cauſes* was the *Influence* which the Prieſts and Jeſuits had upon the Affections and Counſels of the Queen, and the Admiſſion of her Majeſty to intermeddle with the great Affairs of State, and with the *Diſpoſing* of Places and Preferments of the higheſt Concernment, whereby thoſe Vol. I. 391.

thoſe *Great Officers* were engaged to favour ſuch *Deſigns* as were infuſed into her Majeſty by thoſe of that Reeligion.

The Remedies propoſed, were,

That the King would not entertain any **Advice** or Mediation from the Queen, in Matters concerning the Government, or for the *Placing* or *Diſplacing* of any great Officers, or for the *Imploying* or Inſtructing any Ambaſſadors or Agents beyond the Seas, or for the *Placing* or *Diſplacing* any of his Majeſty's Servants about his Perſon, or about the Perſons of the Prince, or any of the Royal Children.

That no Perſon whatſoever ſhould preſume to ſollicite any Propoſition, for the **Marriage** of any of the King's Children, with any Prince or Perſon of the **Popiſh** Religion, or to aſſiſt or attend any of them in any Voyage beyond the Seas, without the Conſent of Parliament.

This laſt Remedy ſhewed their great Sagacity and Foreſight, That Popery could be introduced by a Popiſh Family, and by them only.

Clarendon, Vol. II. 501. The Counſel of the King's intended Journey, and perſonal Expedition into *Ireland*, to ſuppreſs the Rebels, was communicated to very few, which makes it probable, that it was one of thoſe *private Reſolutions* that were taken at *Windſor*, before the Queen's Journey to *Holland*; and that *Ireland* was the Place of Strength, to which his Majeſty was to retire.

Vol. I. 506. That the *ſole Motive* of the King's Journey into the Northern Parts, was to ſeize *Hull*, and therein the *Magazine* of Arms and Ammunition, which, upon Disbanding the late Army, had been there laid up, and which at that Time exceeded the Stores in the *Tower*; and that his Majeſty's Purpoſe, of taking a Journey to *Hull* in Perſon, with his uſual Train, and (being in the Town) to ſecure the Place, was concealed to that Degree, that very few about him knew any thing of it.

The King, whilſt he was at *York*, in 1642, depended on the Queen's Care and Activity, expecting, with Impatience, the Arrival of all *Neceſſaries*, which were to be provided in Foreign Parts, by her Negotiations and Procurement.

Another

Another extraordinary Inſtance diſcovering, not only the Queen's Abſolute Power with the King, but her Deſigns, was, her procuring his Majeſty's Authority, to promiſe the *French* Court, *That if that Crown would afford King* Charles *Aſſiſtance, he would* Take away *the Penal Laws againſt the* Roman *Catholicks in* England; which, in effect, implies an Intention, that that Aſſiſtance ſhould help him to *Take away* Parliaments: For he was well enough convinced, that thoſe Penal Laws would never be taken away, with the Concurrence of a Proteſtant Parliament, whilſt that Parliament was in Fears of Popery. Sanderſ. 765.

It is remarkable, That in the Beginning of the King's Troubles, the great Fears and Jealouſies of the People were, *That Popery was intended to be Introduced*; and therefore the People, after the War Commenced, concluded, That the Queen's Power with the King, was Abſolute, or elſe his Majeſty would never have made two Popiſh Gentlemen, Sir *Arthur Aſton*, of *Tixall*, and Collonel *Gage*, ſucceſſively, Governors of *Oxford*, which was his principal Place of Arms.

SECT. LXXIX.

II. **Debates** *about the Deſign to bring up the Army in the* North, *to Awe the Parliament.*

This Attempt was made (Pending the Earl of *Strafford*'s Impeachment) and was afterwards Stiled, A Plot to **Awe** the Parliament, and to *Reſcue* the Earl, and put him at the Head of the Truſty *Iriſh* Army; for it was, undoubtedly, Contrived by the Earl's Friends. The Fact relating to which Matter, was thus: D'Orleans 38.

Some Perſons of immediate Truſt, as well about the King, as about the Queen, Treated with ſome Officers, and propoſed to Incenſe the Army, as if they were Neglected, by Repreſenting how much greater Care the Parliament took, to ſupply the *Scots* Army, than the *Engliſh*; for that ſometimes the Money that was Aſſigned and Paid for the Uſe of the *Engliſh* Army, was again taken away, and diſpoſed to the other; And that it would not be difficult to bring up the Army, and **Awe** the Parliament, by procuring the Officers, to Petition the King and Clarendon, Vol. I. 244. 265.

Parliament, Jointly, which, if not granted, would Create Differences, and then it would be eaſy to diſcern, how theſe Differences would be Decided.

Clarendon, Vol. I. 246. For this Purpoſe, a Draught of a Petition was prepared, to be Signed by the Officers; which Draught, the King Read over twice, and, in Teſtimony of his Approbation, Signed it with the Letters *C. R.* by which the Petitioners repreſented, firſt, their great Want, which they, nevertheleſs, ſuffered without Complaining, or Interrupting the Affairs in this preſent Parliament, *a Temper not uſual in Armies*: Next, They ſpecified the Inſtances of his Majeſty's great Condeſcentions, in Redreſſing Grievances; And next, the Enormities of Pragmatical, Turbulent Spirits (meaning, the Juncto and Active Members) in their Mutinous and Unſatisfied Behaviour, their Diminutions of the Regal Prerogatives, their Endeavours to *Subvert* the whole Frame of Government, their Raiſing *Tumults* at *Whitehall*; and They therefore Petitioned his Majeſty to Puniſh the Tumult-Leaders, offering to wait upon his Majeſty (which muſt neceſſarily be at *Whitehall*, for his Majeſty was there) hoping to Appear as Conſiderable in Defence of the King and Parliament, as what Number ſoever ſhould preſume the Contrary, whereby the King and Parliament would be, not only Vindicated from the Precedent Innovations, but ſecured from the Future, which threatned Effects ſtill more Dangerous.

This Petition was Carried down to the Army, and Signed by ſome Officers.

Vol. I. 247. 268. Many Meetings, at Mr. *Peirey*'s Chamber, were had between thoſe of Truſt, about the King and Queen; and the Officers, ſome of which Officers were, by the King himſelf, ſent to thoſe Meetings, where they took an *Oath of Secrecy*; And one of the Officers propoſed, as the moſt notable Service, to bring up the Army preſently to *London*, which would ſo Awe the Parliament, that they would do any thing the King Commanded.

This being the Fact,

Vol. I. 252. 699. The Parliament, upon the Diſcovery, Voted, *That there was a* Deſign, *not only to Poiſon the Affections of the Army, towards the Parliament, by making them Believe they were Neglected, and the* Scots *preferred much before them, but to bring*

bring up that Army to London, *to* **Awe**, *and Force the Parliament*; And thereupon, the Parliament cauſed a **Proteſtation** (now called an Aſſociation) in the Nature of an Oath, to be Entred into, and taken, not only by the Members of the two Houſes, but throughout the Kingdom, whereby all Men did Engage, *To Maintain and Defend the Power and Privileges of Parliament, and to Oppoſe and bring to Puniſhment, all ſuch as ſhould by Force, Councils, or otherwiſe, do any thing to the Contrary.* 5 May, 1641. Clarendon, Vol. I. 386.

The Conſequences of this **Plot** to bring up the Army, were, *That the People were* Jealouſed *and Inflamed*; *The Parliament, as the only Patriots, were Applauded*; *The Aſſociation was Introduced*; *The Fate of the Earl of* Strafford, *was Precipitated*; *The Grand Bill for the Continuance of this Parliament, was paſſed*; *The Overtures for giving to the King a Revenue, were Croſſed*; *The Reverence due to the King and Queen, was Leſſened*; *The* Scots *Army was Continued*; *The* Engliſh *Army Remained Undisbanded*; *The two Houſes, in Relation to the Biſhops, Incenſed*; *And the Earl of* Newcaſtle *Blemiſhed, for that he was to have Commanded the Army, in this Black and Odious* Conſpiracy. Ibid. 269. Ibid. 580.

The King was ſo purſued by the Parliament, with Objections about this *Plot*, to bring up the Army, that his Majeſty, in his Declaration from *York*, of *March* the 9th, 1641, was pleaſed to declare, *That he could not, without Indignation, ſuffer himſelf to be Reproached, to have intended the leaſt Force, or Threatning to his Parliament, as the being Privy, to the bringing up the Army, would Imply*; *whereas, he called* God to Witneſs, *he never had any ſuch Thought, nor knew of any ſuch Reſolution, concerning his late Army*; But, in the ſame Declaration, was pleaſed to admit, *That he had ſeen a Copy of the Petition, and that he had Read the ſame twice over, and that his Majeſty had written* C. R. *upon it, to teſtify his* Approbation. Ibid. 462. 551. Ibid. 247.

But the Parliament Argued, *That his Majeſty's Admiſſion of Reading and Signing the Petition, and yet inſiſting*, That he did not Think, or Intend, any Force towards the Parliament, was *Proteſtatio contra factum*; And, therefore, in Regard this **Conſpiracy** was as Injurious to the Conſtitution, as the Fact was Evident and Undeniable, the Parliament, never Ceaſed to *Preſs* Ibid. 545. 550. 587.

Preſs it, as a Reproach on the King, throughout this whole Controverſy.

SECT. LXXX.

III. Debates *about the* Iriſh *Maſſacre and Rebellion.*

This was an Adventitious Affair, that turned greatly to the Strengthning of the Active **Inviters**, whoſe Deſtruction (in Revenge for the *Scots* Invaſion) had been Reſolved on.

Previous to the Diſputes about this Queſtion, it will be requiſite, not only to Obſerve the Original Intention of Lord *Strafford*, who (for the Execution of the private Reſolutions, taken between *December* 1639, and *April* 1640) had Raiſed an Army of 8000 *Iriſh* (Papiſts) but alſo to Repeat how this Parliament, in their Impeachment of that Earl, had inſiſted, *That that Army was Raiſed, to Invade* England, *and Eſtabliſh here that Arbitrary Government, which had Impoſed Taxes, and Adminiſtred without Parliaments.*

The Lord *Strafford* Defended himſelf againſt the Impeachment, by Alledging, *That the* Iriſh *Army, by him Adviſed, was Raiſed, Not to Invade* England, *but to Invade* Scotland, *and was known ſo to be*; which was, in effect, a Conceſſion, that he Adviſed that Army to be Raiſed, with an Intent to Subdue the *Scots*, and Reduce them to an Abſolute Subjection to that Power, which had *Impoſed* Epiſcopacy, and the Canons, and Liturgy, on that Nation, and, conſequently, to the King's unlimited Will and Pleaſure.

Clarendon, Vol: I. 144, 224, 280. My Lord *Clarendon* every where Declares and Avows, *That the* Iriſh *Army was Raiſed to* Invade, *and to Viſit, or to make a Diverſion in* Scotland; And in Suming up the Circumſtances, which made the King's ſudden Reſolution taken at *York*, in *September* 1640, To Aſſemble a Parliament in *England*, appear to be Unneceſſary, and a great Miſtake in Politicks; his Lordſhip mentions This, as a Principal one, *viz. That there was an Army in* Ireland, *ready to have Viſited* Scotland.

Ibid. 162. Now, admitting that to be the Caſe, then the Conceſſion will juſtify two Things; Firſt, it made it neceſſary for the *Scots*

to

to haſten and ſtrike the firſt Blow, by invading *England*; and thereby bring the King under a Neceſſity to call a Parliament in that Kingdom, which they were aſſured would make Inquiſition for the evil Advice, and puniſh the Adviſers; and that by ſuch their Invaſion of *England*, the *Scots* would more effectually defend and reſcue themſelves from the Dangers of an *Iriſh* Army, than the whole Power of *Scotland* could afford againſt ſuch an Invaſion; and therefore *Neceſſity* made that Lawful to the *Scots*, which otherwiſe might not be ſo. 2dly. The Raiſing this *Iriſh* Army to invade *Scotland*, made the *Engliſh Sollicitation* of the *Scots* to invade *England*, in like Manner, *neceſſary*; becauſe the ſame *Iriſh* Army that would Enable the King to ſubdue the *Scots*, and to eſtabliſh in *Scotland* an Arbitrary Power, might, with Eaſe, march from thence into *England*, and Enable him to perpetuate there, the late Aſſumed Power, which was equally Arbitrary; and in that Light the **Invitation** of the *Scots* will appear to be Reaſonable and Lawful.

It is alſo to be noted, That the King afterwards, about *June* or *July* 1641. *Disbanded* the *Iriſh* Army; to the Intent to clear his Way to the meditated Deſigns in *Scotland*; becauſe the Keeping that Army in *Ireland* on Foot, was inconſiſtent with the Meaſures intended to amuſe and quiet the *Scots*; for if the *Scots* had ſtood in Fear of the *Iriſh* Army, his Majeſty's Propoſitions to ſettle their Tranquillity, would have appeared improper and incoherent.

Theſe Facts being premiſed, it is ſtill *neceſſary* to obſerve, That ſome Concluſions may be inferred from all the Relations of this Matter, *viz. That the* Iriſh *did, from the Strength of their Army, raiſed by Earl* Strafford, *and compoſed of Papiſts,* Meaſure *their own Strength with that of the Proteſtants; That the* Nuncio, *and the Queen's* Romiſh *Clergy, did communicate to the Papiſts in* Ireland, *That the true Meaning of* Disbanding *that Army in* July 1641. *was to make Way for what was to be done in* Scotland, *and that the* Disbanded *Soldiers might be eaſily Re-embodied*; It is alſo obvious, That the *Romiſh* Nobility and Gentry of *Ireland*, did make ſome Propoſitions to the *Nuncio* and *Romiſh* Prieſts (about the Queen) Repreſenting, *how eaſy it would be for them, to aſſume and take into their Hands the Government of that Nation; and, after that, to aſſiſt the King, to ſubdue the* Puritan *Faction in* England (ſo called BURNET, P. 41.

from their Pretences to Worſhip, according to the pure Word of God) ; and that thereupon the *Nuncio* and *Romiſh* Clergy, in whoſe Counſels the Queen always engaged, did, about *Auguſt* 1641. procure Letters to be written in the Queen's **Name**, and, perhaps, in the King's Name too, containing Directions to the *Iriſh Romaniſts* (to wit) to Lord *Antrim*, and to the *Oneals*, *Macguires*, *Macmahones*, *&c.* to Take up Arms, and to *Take the Government* of *Ireland* into their Hands ; and that all the *Iriſh* believed the Queen, whoſe Power with the King, they knew was Abſolute and Unqueſtionable, encouraged the Undertaking.

The Lord *Antrim*, and his Brother *Alexander Mac-Donnell*, Sir *Phelim Oneal*, the Lord *Macguire*, and the *Mac-Mahones*, and others, *Embraced*, with Alacrity, theſe Letters and Orders ; but did, of themſelves, naturally *judge* and conclude, That this Time was to be the Day of their Deliverance ; and Argued, *That if they were to* ſubdue the Puritans *in* England ; *it was reaſonable, and even neceſſary, to conclude, That the Way to clear their Proceedings in that important Buſineſs, was firſt to deſtroy and* Extirpate *the Proteſtants in their own Country, before they attempted to leave* Ireland, *to* invade *either* England *or* Scotland.

This **Arming** of the *Iriſh* Papiſts, whether with or without Authority, put Fire into their Antient Animoſities ; inſomuch, that their **Fury** broke out into Murders and Cruelties more barbarous and inhumane, than were ever before heard of ; and as an Addition to their Pride and Diſorder, they *Boaſted, That they had the King's* Authority *for what they did* ; they ſtiled themſelves, *The Queen's Army*, and Publiſhed and Declared, *That when they had finiſhed their Buſineſs in* Ireland, *they would come over to* England, *to* **Settle** *the Queen's Religion, and Eſtabliſh the King's Prerogatives againſt a* Puritan Parliament.

The firſt Notice the King received of this *Outrage* was whilſt he was at *Edinburgh* ; and his Majeſty, being ſurprized, and even amazed, *wrote* to the Parliament in *England, That he was ſatisfied, it was no Raſh Inſurrection, but a* formed Rebellion, *which muſt be proſecuted with a* ſharp War ; *The Conducting and Proſecuting whereof, he wholly* **Committed** *to their Care and Wiſdom, and Depended on them,*

for

for carrying it on effectually; but how these hot Resentments, after his Majesty had conversed with the Queen, cooled and abated, is as yet Mysterious.

It is here proper to relate some Circumstances, touching two Gentlemen (*viz.*) Sir *William Parsons*, one of the Lords Justices of *Dublin*, and the Earl of *Leicester* (whom the King had constituted Lord Lieutenant of *Ireland* in the Room of Lord *Strafford*) because the King's Treatment of these Men, will come to be Material in Opening other Proceedings.

As to Sir *William Parsons*, it must be observed, That the *Irish* Conspiracy to root up and Massacre the Protestants, was carried on with incredible Secrecy; however, the Surprize of the Castle of *Dublin*, and seizing therein the National Magazine of Arms and Ammunition, was the Principal Part of the whole Contrivance, because without it, they could never secure to themselves the Government.

And in regard, *Saturday* the 23d of *October* 1641. was the Day agreed on for the general Insurrection and Massacre, the Popish Nobility and Gentry, in great Numbers, conveyed themselves privately, into the City of *Dublin*, on *Friday* in the Evening, and were to surprize the Castle that Night, and to Massacre the Citizens the next Morning.

If the *Irish* Papists had succeeded in this Part of the Conspiracy, questionless they had Master'd the whole Kingdom; for on *Saturday*, the Massacre took Effect successfully, in all other Parts of the Nation; and at *Dublin*, it was nine in the Evening on *Friday* Night (which, in that Time of the Year is four Hours after Sun-setting) before the Government had any Notice, at which Time it was Discovered to Sir *William Parsons*, one of the Lords Justices, by one *O'Conally*, of mere *Irish* Extraction (but secretly a Protestant) to whom *Mac-Mahone*, a Papist, at an Ale-house in *Dublin*, communicated the Conspiracy, representing the Undertaking to be, the Rescuing his Country from under the *English* Dominion, and said, *He doubted not of* Conally's *Concurrence*, or however, *He doubted not of Success, although* Conally *should refuse*.

Sir *William Parsons* in great Fear, as well as with great Dexterity, doubled the Guards of the Castle, and caused the Mayor

of

of the City to ſhut the Gates, and raiſe the *Militia*; they ſeized the Lord *Macguire*, and *Hugh Mac-Mahone*, and many of the *Iriſh*, who came that Evening to Town; and by ſhutting the Gates, they ſhut out others who endeavoured to enter, amongſt whom (that is the excluded) was the Earl of *Antrim*, who was one of thoſe, who was to ſurprize the Caſtle; and by thoſe Means, the Conſpiracy was Defeated in that Part, on which it principally Depended; and Sir *William Parſons*, Diſpatched away *Conally*, with an Account of as much as he then knew, to the Earl of *Leiceſter*, Lord Lieutenant of *Ireland* then at *London*, who ſpared no Pains to communicate it ſtrongly to the Houſe of Commons, whereby the Parliament, the City, and all Manner of People became equally poſſeſſed with Horror and Amazement.

This precipitated and untimely Rage of the Papiſts, Diſconcerted all the Meaſures, and rendred Abortive all the Power and Aſſiſtance, which, from that Quarter, was expected; and, doubtleſs, the Queen and her Adherents became Afflicted with the Diſappointment of Seizing the Caſtle of *Dublin*, and with the Difficulties, that the raſh and ſavage Behaviour of the *Iriſh*, brought upon the King's Adminiſtration.

The Diſappointment of ſurprizing *Dublin-Caſtle*, and the Convulſions in *England*, that were occaſioned by the Zeal and Activity of thoſe two Officers of State, Sir *William Parſons*, and Earl of *Leiceſter*, brought both of them into the Queen's Diſpleaſure, and that Diſpleaſure cauſed them both, within the Space of 15 Months, to be, for thoſe Reaſons, diſplaced and diſgraced.

SECT. LXXXI.

ABOUT this Time, intervened a remarkable Proceeding in this Seſſion of Parliament, which explains another Part of this **Conſtitution** to be, as is before aſſerted, *viz.* That there paſſed with Celerity, through the Houſe of Commons, a Bill for *Preſſing Soldiers* for the Defence of *England* and *Ireland*, which was ſent up to the Lords for their Concurrence; where the King's Attorney-General objected againſt a Recital in the Preamble, which alledged, *That the King had, in no Caſe, or upon any Occaſion, but upon an Invaſion from a Foreign Power, Authority to preſs the* Free-Born Subjects; Becauſe ſuch a Power

Power in the Crown, could not conſiſt with the Freedom and Liberty of the Subject's Perſon, and deſired to be heard, on the King's Behalf, againſt that Part of the Bill, which he ſaid was prejudicial to his Majeſty's Prerogative. To this Motion, many of the Lords inclined; which Obſtruction and unexpected Delay given to a Bill at this Time ſo neceſſary, and ſo much wanted, and called for, raiſed a general Diſcontent, whereupon the King, on the 14th of *December* 1642. came to the Parliament, and ſending for the Commons, his Majeſty, in a Speech from the Throne, took Notice of the Bill for *Preſſing*, then Depending with the Lords, and of the Diſputes raiſed, concerning his ancient Prerogative; but, to avoid further Delay, his Majeſty offered, *That the Bill ſhould paſs, with a* Salvo Jure *for both the King and People, Leaving ſuch Debates to a Time that would better bear them.*

The Lords and Commons (before enough divided) did, upon this intermedling with their Parts of the Legiſlature, unite and concur in a Vote or Reſolution, *That the* Rights *and* Privileges *of Parliament, were the Birthright, and Inheritance, not only of themſelves, but of the whole People of this Kingdom, wherein every one of the Subjects was intereſted; And that amongſt the Privileges of Parliament, it was their ancient and undoubted* Right, *That the King* ought not to take Notice *of any Matter in Agitation or Debate in either Houſe of Parliament; but by their Information or Agreement; and that the King ought not to propound any Condition, Proviſion or Limitation to any Bill, or Act in Debate or Preparation in either Houſe, or to* Declare *his Conſent or Diſſent, his Approbation or Diſlike of the ſame, before it ſhould be preſented to him in a due Courſe of Parliament*; and, accordingly, the two Houſes laid before his Majeſty theſe Votes and Reſolutions; after which, the Act paſſed the Lords Houſe, and received as before is mentioned, the Royal Aſſent, without any further Diſpute or Alteration: Whereby thoſe Parts of the Conſtitution, touching the *Liberty* of the Subject, the Power of *Preſſing*, and the Privilege of Parliament, relating to the *Introducing* and *Paſſing* of New Laws, having now reſted for 80 Years, without Interruption or Queſtion on either Side, ſeem to be Matters fully aſcertained and eſtabliſhed.

SECT. LXXXII.

AFTERWARDS the King could, in no Sort, Evade the Paſſing the Act of Parliament, which was Tendred to him, for Granting and Dividing the Forfeited Lands amongſt ſuch Adventurers, as would Subſcribe and Advance Money, for Carrying on the *Iriſh* War, to Subdue thoſe Bloody Rebels; and having Paſſed it, the Parliament inſiſted, That the King had thereby Diveſted himſelf of all Power, either to make a *Ceſſation*, or a Peace, or to grant *Pardon* to thoſe Traitors, in Regard, that, upon making a *Peace*, the Forfeitures muſt neceſſarily be Remitted; and if that Power to make *Peace*, remained to the King, the Adventurers Security would be (as it was) Undermined and Invalidated: whereas ſuch a Proceeding would be contrary, not only to that poſitive Law, and to natural Juſtice, but to his Majeſty's numerous Promiſes; and yet, afterwards, that *Ceſſation*, and that *Peace*, were made, by which there was as much done, as could be well done, to *Pardon* thoſe Murdering Rebels, to Remit the Forfeitures, and to Subvert the Right of the Adventurers.

The Parliament, on their Part, Argued and Charged to the King's Account, theſe Imputations, *viz.*

Clarendon, Vol. I. 443, 465, 549. That the Rebellion in *Ireland*, was *Framed and Contrived* in *England*, and was Fomented and Countenanced by the Queen, and by a Popiſh Party about her; for which they had (as they ſaid) many Evidences; and amongſt others, that it was the common Speech of the Rebels, *That they would Recover to his Majeſty, his Royal Prerogatives, which a Puritan Faction in* England, *had Wreſted from him.*

Ibid. 494. The Rebels boldly Affirmed, They did Nothing but by **Authority** from the King, and that his Majeſty did Favour and Allow their Proceedings, and that their Inſurrection was undertaken by the **Warrant** of his Commiſſion; that they were the Queen's Army, and that their Purpoſe was, when they had Compleated their Buſineſs in *Ireland*, to come over into *England.*

Ibid. 402, 403.

Ibib. 465.

That

That theſe Treacherous Pretences, did appear to be True, or, at leaſt, probably True (as the Parliament Alledged) foraſmuch as the Proclamation, whereby thoſe Miſcreants were declared Rebels and Traytors, had been with-held from *Saturday* the 23d of *October*, 'till *Saturday* the 1ſt of *January*, 1641, being 69 Days after the Commencement of that Unparallell'd Butchery and Rebellion, and even then, the King, by an Order Signed with his own Hand, had directed the Printer, not to Print more than 40 Copies, and had given a ſpecial Command, not to exceed that Number; and that none of them ſhould be Publiſhed, 'till his Majeſty's Pleaſure ſhould be further ſignified; whereas his Majeſty had proceeded againſt the *Scots* upon their Invaſion, who Committed no Hoſtilities, in a very Quick and Sharp Manner, cauſing Proclamations againſt them, as Traytors, Dated the 22d of *Auguſt*, 1640, to be, not only forthwith Diſperſed, with extraordinary Diligence, throughout the whole Kingdom, but to be Read in all Churches, Accompanied with publick Prayers and Execrations.

It is material to be remembred, That the Barbarous Cruelties Acted in the Maſſacre, ſpread over all *England*, dreadful Apprehenſions, inſomuch, that when any Rumour of an *Iriſh* Invaſion was confidently Aſſerted, the poor People, all the Countries over, were ready, either to run to Arms, or hide themſelves, thinking the Papiſts were coming to Cut their Throats. Baxter's Life, p. 44.

The Parliament further Argued, That his Majeſty's Withdrawing, and Abſenting from, and his Intending to make War upon his Parliament, to whoſe Care he had Committed the whole Conduct of making a Sharp War upon the *Iriſh* Rebels, was not only to make War upon, and Diſable thoſe that did make War upon, the Rebels, *but to make War on the ſame Side with thoſe Rebels*, and, conſequently, was the greateſt Favour and Countenance, his Majeſty could afford them; and that *Ormond* had Endeavoured to make the *Iriſh* Rebels underſtand, that their own Preſervation and Intereſt, was Inſeparable from the Support of the King's Dignity and Authority. Clarendon, Vol. I. 162. Vol. II. 157, 158, 164, 165, 467. Vol. III. 98. Vol. I. 584. Vol. III. 429.

SECT.

SECT. LXXXIII.

THE King's Anſwers were,

Clarendon, Vol. I. 600. That thoſe Complaints wanted Juſtice, in Regard they did not State the other Part of the Evidence, *viz. That the* Iriſh *Rebels did, moreover, Threaten the Rooting up the Name of the* Engliſh, *and that they would have a* King *of their own, and be no longer Governed by his Majeſty.*

Ibid. 491. But becauſe the Rebels might be afterwards Inſtructed thus to ſay, to Obſcure what they had at firſt too plainly Declared, it was not Regarded; for it is Apparent, they neither meant ſo, nor did the King's Miniſters ſo underſtand them.

But the King's fulleſt Anſwer to thoſe Charges, was his Meſſage from *York*, of the 8th of *April*, 1642, whereby his Majeſty Declared to the Parliament, *That he had* firmly Reſolved *to go, with all convenient Speed, into* Ireland, *to Chaſtiſe thoſe deteſtable Rebels, in Defence of God's True Religion, and his Diſtreſſed Subjects*, Promiſing, *That he would never Conſent, upon any Pretence whatſoever, to the* Toleration of the Popiſh Profeſſion there, *or to the Abolition of the Laws then in Force againſt Popiſh Recuſants, in that Kingdom.* To the Sincerity of which Profeſſion and Promiſe, he *Called God to Witneſs.*

Ibid. 491. His Majeſty further Advertiſed the Parliament, *That towards this Work, he intended to Raiſe, near* Cheſter, *forthwith* 2000 *Foot, and* 200 *Horſe, and to Arm them from his Magazine at* Hull, *and deſired the Parliament to add the Charge to their former Undertakings for that War.*

Ibid. 491. With this Meſſage, the King ſent to the Parliament a Bill for *Settling the Militia for one Year*, as after is mentioned, hoping, that Bill would facilitate his intended Expedition to *Ireland*, and Quiet them, during his Abſence.

Ibid. 493. The Parliament was, at this Meſſage, *more Diſcompoſed*, than at any thing which had before happened; for they concluded, That *Ireland* was the Place of Strength, according to the

the ſecret Reſolutions taken with the Queen, before her going to *Holland*, to which his Majeſty was to *Retire*; for in *Ireland*, he would ſet himſelf at the Head of two Armies, the one under *Ormond*, and the other under *Antrim*, and his Brother *Alexander* (the *Calkito*) and the *Oneals*, both which, the Parliament Apprehended to be at the King's Devotion.

The Parliament, therefore, Returned an Anſwer full of ſpecious Reaſons, againſt the King's Perſonal Expedition; to wit, Danger to his Perſon, his Declining the Advice of his Parliament, the Inconveniencies of his Abſence, the Inſecurity of the Adventurers, who foreſeeing an Improvident Peace, would pay in no more Money upon their Subſcriptions; that this Nation would ſuſpect ſome *Force* was Intended: But their true Reaſon was, That this Undertaking would take the War of *Ireland*, out of their Hands, and their ſtrongeſt Reaſon was, their own Fear of the great Power, which the King would, by a Coalition of the two Armies, be Maſter of; againſt which, they had nothing then ready to Oppoſe: The Terror, therefore, of this Attempt, Rouzed them to Diſpatch to the King, theſe Magiſterial Declarations; to wit, Clarendon, Vol. I. 494.

That they could not Conſent to any Levies of Soldiers, for any Expedition into Ireland, *or to the Payment of them, but ſuch only, as ſhould be Imployed and Governed by their Directions.* Vol. I. 495.

That if any ſuch Levies ſhould be made, they ſhould Interpret the ſame to be deſigned for the Diſturbance *of the Publick Peace, and ſhould Apply the Authority of Parliament, to Suppreſs the ſame.*

That if his Majeſty ſhould be perſuaded to go into Ireland, *contrary to their Advice, they would not ſubmit to any Commiſſioners his Majeſty ſhould Chuſe; but reſolved to Govern the Kingdom by the Advice of Parliament; and, therefore, they prayed the King to Deſiſt,* and Return to his Parliament.

Soon after this, the Parliament propoſed to Raiſe a ſeparate Army of 6000 Men, to be called, *The Adventurers Army*, and to be Landed in *Munſter*, being the Weſtern Part of *Ireland*, and deſired a Commiſſion, giving Lord *Wharton* an Independant Command, ſubject only to the Orders of the Two Vol. I. 528.

Houſes of Parliament, Urging, *That his Majeſty had Committed to them, the whole Conduct of that War, and that Lord* Wharton *was a Perſon in whom they could Confide, to Proſecute a Sharp War againſt thoſe Rebels.* But the King, in his Turn, denied the Commiſſion.

Theſe Velitations brought Nothing to an Iſſue, but Exclamations, as if his Majeſty hindred the Proſecution of the *Iriſh* War. The Parliament, therefore, never failed to make that Rebellion, and his Majeſty's Tenderneſs towards thoſe Rebels, one Ingredient in all their Imputations.

SECT. LXXXIV.

BUT before theſe Affairs are parted with, it will be material to Obſerve, how his Majeſty Treated with the *Iriſh* Rebels, preparatory to the Opening the Treaty of *Uxbridge*, which Commenced on the 30th of *January*, 1644; for the King being aſſured, the Parliament Commiſſioners would Preſs the
Sanderſ. 755. Carrying on, againſt the *Iriſh*, a Sharp War, his Majeſty previouſly Reſolved, not only, not to Break the Ceſſation he had lately granted, but to Conclude a Peace with thoſe Rebels, ſo as to Anticipate the Debates about them; and, therefore, on the 15th of *December*, 1644, his Majeſty wrote to *Ormond*, *That he could not find ſo good and ſpeedy a Remedy to Redreſs his Affairs in* England, *as to make Peace in* Ireland; *and therefore Commanded him to Diſpatch that Peace out of Hand*: Adding, *That as for Religion, his Majeſty did promiſe, if the Peace were made, and if the* Iriſh *would ſpeedily give him that Aſſiſtance which they had promiſed, for Suppreſſing the Rebellion in* England, *then his Majeſty, when he ſhould be* Reſtored to his Rights, *would Conſent to the* **Repeal** *of all the Penal Laws in* Ireland, *againſt the* Roman *Catholicks* (*except thoſe againſt Appeals to* Rome *and* Præmunire) *and Commanded* Ormond *to Impart that Letter to none, but to* Browne, *the Lord* Muskery, *and* Plunket, *and that with an Injunction of ſtrict Secrecy.*

And ſoon after, on the 7th of *January*, 1644, (being three Weeks before the Treaty at *Uxbridge* was to Commence) the
Ibid. 756. King wrote again to *Ormond*, in theſe Words.

Upon

Upon the great Rumours and Expectations of Peace, I think it neceſſary to tell you, That the Rebels here, have Agreed to Treat, and, moſt aſſuredly, one of the Firſt, and Chiefeſt, Articles they will Inſiſt on, will be to Continue the Iriſh *War, which is a Point not Popular for me to Treat on, of which you are to make a Double Uſe; Firſt, To haſten, with all poſſible Diligence, the Peace there, the timely Concluſion of which, will take off that Inconvenience, which, otherwiſe, I may be ſubject unto, by the Refuſal of that Article, upon any other Reaſon. Secondly, By dextrouſly Conveying to the* Iriſh, *the Danger there may be of their Total and Perpetual Excluſion from* those Favours, *I intend them, in Caſe the Rebels here clap up a Peace with me upon reaſonable Terms, and only Exclude them, which, poſſibly, were not Counſellable for me to Refuſe, if the* Iriſh *Peace ſhould be the only Difference betwixt us, before it were perfected there: Theſe, I hope, are ſufficient Grounds for you to perſuade the* Iriſh *to Diſpatch a Peace upon reaſonable Terms, Aſſuring them, That when you have once fully engaged my Word (in the Concluſion of a Peace) all the Earth ſhall not make me Break it.*

But not doubting of a Peace, I muſt again remember you to Preſs the Iriſh *for their ſpeedy Aſſiſtance to me here, and to their Friends in* Scotland, *my Intentions being to Draw from thence into* Wales (*the Peace being once Concluded*) *as many as I can of my Armed Proteſtant Subjects, and deſire, that the* Iriſh *would ſend as great a Body, as they can, to Land about* Cumberland, *which will put thoſe Northern Counties in a brave Condition: Provide all the Shipping you may, as well* Dunkirk, *as* Iriſh *Bottoms; and remember, that after* March, *it will be difficult to Tranſport into* England, *the Rebels being Maſters of the Seas.*

The Noble Hiſtorian hath alſo Informed us, *That in the Year* 1647, *Commiſſioners from the Confederate* Iriſh *Papiſts* (of whom *Antrim* was Chief) *went into* France, *having obſerv'd, that after they had driven the King's Authority from them, they* quickly *found their Need of it; and therefore deſired of the Queen, and of the Prince of* Wales (*then at* Paris) *that by their Favour, they might have the King's Authority* Again. Clarendon, Vol. III. 97, 98.

This,

This, doubtleſs, was ſo Expreſſed by the Noble Hiſtorian, to the Intent no Reader ſhould underſtand it, without underſtanding, at the ſame Time, *That thoſe Rebels had,* Before, *the King's Authority.*

Clarendon, Vol. III. 429.

However, Providence ſoon after permitted the Sword to be put into the Hands of *Cromwell*, and *Ireton*, with a Commiſſion like to that given to King *Saul*, That as he was to Blot out the *Amalekites* from under Heaven, ſo thoſe Captains were to Hew down (and did Hew down) without Mercy, every *Iriſh* Murderer whom they could diſcover, whether it were in Hot or Cold Blood, in Revenge for their Cruelty, in Slaughtering, without Cauſe, and without Mercy, and without Regard, either to Sex or Age, the Innocent, Surprized, and Unarmed Proteſtants.

Theſe Memorials of the Noble Hiſtorian, add a Confirmation, to what is written by Biſhop *Burnet*, Page 41. where he ſays, *Lord* Antrim *produced to the Committee of Council, in* England, *in the Year* 1660, *a Letter of Credence from King* Charles I. *wherein his Majeſty wrote*, That he had not then Leiſure, but referred himſelf to the Queen's Letter, *and ſaid*, That was all one as if he writ himſelf; *And that Lord* Antrim, *at the ſame Time, produced a whole Series of Letters from the Queen, directing him to do, as he had done, in the Proceedings in* Ireland; *and that the Queen-Mother did, in* 1660, *with great Zeal, Eſpouſe Lord* Antrim's *Petition and Suit, and not only afforded him Lodgings in her own Royal Palace of* Somerſet-Houſe, *and declared, She was Bound in Honour to ſave him, but procured her Son, King* Charles II. *to write to the Duke of* Ormond, *Lord Lieutenant of* Ireland, *directing, that Lord* Antrim *ſhould be Included in the* Iriſh *Act of Indemnity, which was actually done accordingly*: The Fact is undeniable.

This *Dilemma* is therefore Obvious, Either the Hiſtorians, who have Tranſmitted to Poſterity, Memorials in Favour of King *Charles* I. (ſuch as Lord *Clarendon*, and *Sanderſon*) have done Wrong to his Majeſty's Memory, or elſe the Parliament's Imputations on his Majeſty's Miniſters, for Countenancing the *Iriſh* Rebellion, ſtand too Plauſible.

SECT.

SECT. LXXXV.

IV. **Debates** *about the Biſhops, and the Taking away their Votes in Parliament.*

In order to make this Matter more Intelligible, it is neceſſary to begin the Relation, where the Noble Hiſtorian begun it, by Informing us, how the Biſhops, by Degrees, Loſt their Antient Reſpect and Reverence; and becauſe his Account is Exquiſitely Written, and Inconteſtibly True, the Subſtance thereof is taken from him.

Beſides the Indirect Artifices and Activity of the French *Embaſſador, moſt of the Proteſtant* Hugonots *in* France, *became as hearty Enemies to King* Charles, *as he had been to them, and in Publick, and in Secret, gave all poſſible Aſſiſtance to thoſe, whoſe Buſineſs was to Deſtroy his Majeſty's Intereſt at Home, and his Reputation Abroad; and as this Animoſity was of Unſpeakable Inconvenience and Damage to the King, throughout all his Difficulties, and of equal Benefit to his Enemies, ſo the Occaſion from whence thoſe Diſaffections grew, was very Unskilfully, and Imprudently, Adminiſtred by the State here, not to Speak of the Buſineſs of* Rochel, *which, though it ſtruck deep in all, yet moſt Men imputed the Counſels of that Time, to Men that were dead, and not to a fixed Deſign of the Court: Thoſe Foreign Proteſtants had a greater Quarrel, which made them believe, that the very Proteſtant Religion was Perſecuted by the Biſhops in* England. Clarendon, Vol. II. 95, 96, 97.

When the Reformation of Religion firſt began in England, *in the Time of King* Edward VI. *very many Proteſtants out of* Germany, *and* France, *left their Countries where the Reformation was ſeverely Perſecuted, and Tranſplanted themſelves, their Families, and Eſtates, into* England, *where they were Received very Hoſpitably; and that King, with great Piety and Policy, by ſeveral Acts of State, granted them many Indemnities, and the free Uſe of Churches in* London, *for the Exerciſe of the Proteſtant Religion, whereby the Number of them Encreaſed, and the Benefit to the Kingdom, by ſuch an Acceſs of Trade, and Improvement of Manufactures, was very Conſiderable, which Queen* Elizabeth *finding, and well knowing, that other*

notable Uſes of them might be made, Enlarged their Privileges by new Conceſſions, drawing, by all Means, great Numbers Over, and ſuffering them to Erect Churches, and to Enjoy the Exerciſe of the Proteſtant Religion, after their own Manner, and according to their own Ceremonies, in all Places where, for the Conveniency of their Trade, they choſe to Reſide; and ſo they had Churches in Norwich, *and* Canterbury, *and other Places of the Kingdom, as well as in* London; *whereby the Wealth of thoſe Places, marvellouſly Increaſed. And, beſides the Benefit from thence, the Queen made Uſe of them in her great Tranſactions of State, in* France, *and the* Low Countries, *and by the Mediation, and Interpoſition, of thoſe Proteſtant People, kept an uſeful Intereſt in that Party, in all the Foreign Dominions where they were Tolerated. The ſame Charters of Liberty, were Continued and Granted to them, during the Peaceable Reign of King* James I. *and in the Beginning of this King's Reign, although, it may be, the Politick Conſiderations in thoſe Conceſſions, and Connivances, were neither made Uſe of, nor underſtood.*

Some few Years before theſe Troubles, when the Power of Archbiſhop Laud, *and Churchmen, grew more Tranſcendent, and, indeed, the Faculties and Uunderſtanding of the Lay-Counſellors, more Dull, Lazy, and Unactive; the Biſhops grew Jealous, that the Countenancing another Diſcipline of the Church here, by Order of the State (for thoſe Foreign Congregations were Governed by a Presbytery, according to the Cuſtom and Conſtitution of thoſe Parts, of which they had been Natives, the Proteſtant* French, Dutch, *and* Walloons, *had the free Uſe of ſeveral Churches, according to their own Diſcipline) would, at leaſt, Diminiſh the Reputation and Dignity of the Epiſcopal Government, and give ſome Countenance to the Factious and Schiſmatical Party in* England, *to hope for ſuch a Toleration.*

Then there wanted not ſome Fiery, Turbulent, and Contentious Perſons, of the ſame Congregations, who, upon private Differences and Conteſts, were ready to Inform againſt their Proteſtant Brethren, and to Diſcover, what they thought might prove of moſt Prejudice to them; ſo that upon Pretence, that thoſe Foreign Proteſtants far exceeded the Liberties which were granted to them; and that under the Notion of Foreigners, many Engliſh *Separated themſelves from the Church, and Joined themſelves*

themſelves to theſe Congregations; the Council-Board Conniv'd at, or Interpoſed not, whilſt the Biſhops did ſome Acts of Reſtraint or Perſecutions, with which thoſe Proteſtant Congregations grew generally Diſcontented, and thought the Liberty of their Conſcience, to be taken from them, which cauſed in London, *much Complaining of this Kind, but much more in the Dioceſs of* Norwich, *where Dr.* Wren, *the Biſhop there, paſſionately, and warmly, Proceeded againſt them* (i. e. perſecuted them) *inſomuch, that many left the Kingdom, to the Leſſening the Wealthy Manufacture there, of Kerſeys, and narrow Cloths, and, which was worſe, Tranſporting that Myſtery into Foreign Parts.*

And that this might be ſure to look like more than what was neceſſary to the Civil Policy of the Kingdom, whereas, in all former Times, the Embaſſadors, and all Foreign Miniſters of State, Imployed from England, *into any Parts where the Proteſtant Religion was Exerciſed, frequented their Churches, and gave all poſſible Countenance to their Profeſſion, and held Correſpondence with the moſt Active and Powerful Perſons of the Proteſtant Religion, and particularly the Embaſſador* Leiger, *at* Paris, *had diligently, and conſtantly, frequented the Proteſtant Church at* Charenton (*near* Paris) *and held a fair Intercourſe with the* French *Proteſtants, throughout the Kingdom, by which they had ſtill Received Advantage, thoſe Proteſtants being Induſtrious and Active, to get into the Secrets of the State, and ſo deriving all neceſſary Intelligence to thoſe whom they deſired to gratify: The Contrary to this, was now, with great Induſtry, practiſed, and ſome Advertiſements, if not Inſtructions, given to the Embaſſadors there, to forbear any extraordinary Commerce with the* French *Proteſtants; and the Lord* Scudamore, *who was the laſt Ordinary Embaſſador there, before the Beginning of this Parliament, whether by the Inclinations of his own Nature, or by Advice from others, not only declined going to the Proteſtant Church at* Charenton (*near* Paris) *but furniſhed his own Chapel in his Houſe, with ſuch Ornaments* (*as Candles upon the Communion Table, and the like,* Al a Mode *of the Popiſh Chapels*) *as gave great Offence and Umbrage to the Proteſtants there, who had not ſeen the like; beſides that he was careful to Publiſh, upon all Occaſions, by himſelf, and thoſe who had the neareſt Relation to him, That the Church of* England *looked not on the* French *Proteſtants, as a Part of*

their

their Communion, which was likewiſe too much, and too Induſtriouſly, Diſcourſed at Home.

They of the Church of England (the Biſhops) *who committed the greateſt Errors this Way, had undoubtedly* (as the Hiſtorian is pleaſed to write) *not the leaſt Thoughts of making Alterations in it, towards the Countenancing of Popery: But having too juſt Cauſe given them to diſlike the Paſſion and Licenſe that was taken by ſome Proteſtants in the Reformed Churches under the Notion of Conſcience and Religion (to the Diſturbance of the Peace of all Kingdoms) unskilfully believed, that the Total Declining the Intereſt of that Proteſtant Party, where it exceeded the neceſſary Bounds of Reformation, would make this Church of* England *looked upon with more Reverence (by* Roman *Catholicks) and that thereby the common Adverſary the Papiſt would abate ſomewhat of his Arrogance and Superciliouſneſs, and that both Parties (Churchmen and Catholicks) ſeriouſly conſidering the Charity which Religion ſhould beget, might, if not unite, yet refrain from the Bitterneſs and Uncharitableneſs of Contention in Matters of Opinion, and agree in the practical Duties of Chriſtians and Subjects. Thus contracting their Conſiderations in too narrow a Compaſs, theſe Men (i. e.* the Perſecuting Biſhops) *contented themſelves with their pious Intentions, without duly weighing Objections, or the Circumſtances of Policy. And ſome of our own Communion, who differed with them in Opinion in this Point, though they were in the right, not giving, and, it may be, not knowing the right Reaſons, rather confirmed than reformed them in their Inclinations, neither of them diſcerning the true and ſubſtantial Grounds of that Policy, upon which that good Correſpondence with the Proteſtants had been founded, which they were now about to change; and ſo the Church of* England *not giving the ſame Countenance to the Proteſtants in Foreign Parts, which it had formerly done, no ſooner was diſcerned to be under a Cloud at Home, but thoſe (Foreign Proteſtants) were glad of the Occaſion to publiſh their Malice againſt the* (perſecuting) *Biſhops, by whom the Name of the Church was unfairly aſſumed, and to enter into the ſame Conſpiracy againſt the Crown, without which they could do little Hurt to Epiſcopacy.*

The Foreign Proteſtants therefore *repreſented* in their Countries, *That a Proteſtant King, who, when he perſecuted and drove out of his Kingdom Proteſtants, did, at the ſame Time,*

favour

favour and countenance Papists, merited no Assistance *to support that Authority*; And, moreover, they argued, *That no Time or Age could shew any Thing so monstrous, as* Papists *persecuted by a Popish King, for Difference only in Opinion amongst themselves.*

Another Matter, which took much from the Reverence due to Bishops, was their Advising this King to publish the **Book of Sports**, in the Year 1633. whereby his Majesty *commanded, That his Subjects should not be Disturbed or Discouraged from any lawful Recreations on* Sundays, *after divine Service, such as Dancing, Archery, Leaping, Vaulting, or other such harmless Recreations, nor from setting up May-Poles, and other Sports therewith used*; and many Ministers, for refusing to read that *Book of Sports* in their Churches, were prosecuted as Offenders, and suspended, not only *ab Officio*, but *a Beneficio.*

The Sober and Considerate Part (vulgarly called the *Puritan Part*) of the People, cried out upon this Proceeding, for two Reasons;

I. Because it was Assuming of a Dispensing Power over an Act of Parliament, to which his Majesty himself had given the Royal Assent; for, by the Statute of 1 *Car.* I. *cap.* 1. it was Enacted, *That no common Plays, or other unlawful Exercises or Pastimes, should be used on the Lord's Day.*

II. Because it was a presumptuous Profaneness, in violating the 4th Commandment; For the King's Command and God's Command, were set in a direct Opposition the one to the other; and therefore the People loaded the Bishops with this Aspersion, *That the surest Method to bring Men to the Idolatry and Superstition of* Rome, *was first to bring them to be insensible of all Religion.*

The Contention which the Bishops raised between the Juris- Clarendon, dictions of the Ecclesiastical and the Common-Law Courts, and Vol. I. 305, their promoting the *Civil-Law* so far, that the King, at the 306, Instance of Archbishop *Laud*, Directed, That one half of the Ibid. 235. Masters in Chancery should be *Civil Lawyers*, united, as Enemies to the Prelates, the whole Profession of *Common Lawyers*, who will never fail to be too hard for their *Oppressors.*

Clarendon, Vol. I. 305. These being the Biſhops Circumſtances, twelve of them having been inſulted by the Mob, in their Paſſage to the Houſe of Peers, and ſome of their Robes torn, Signed a Proteſt and

Ibid. 350. Delivered it to the King, who immediately ſent it to the Houſe of Peers, importing, *That they durſt not ſit and vote in the Houſe of Peers, unleſs they were protected from the Tumults; and, therefore, they did* Protest *againſt all Laws, Orders, Votes, Reſolutions and Determinations, as in themſelves Null and of none Effect, which, in their Abſence, ſince the 27th of* December 1641. *had already paſſed, and ſhould paſs in that Houſe, during the Time of this their forced Abſence.*

Ibid. 354. The Commons thereupon Impeached the Biſhops of High-Treaſon, for preſenting that Proteſtation, in Regard they claimed to be a *Diſtinct Eſtate*, having a Voice upon the Matter as *Negative* as the King's, which inferred a fourth *Eſtate* or *Negative* in Parliament; and therefore the Commons urged, *That this Proceeding of the Biſhops tended to* ſubvert the Conſtitution, *and to change the Fundamental* Form *of Government.* But this Impeachment was afterwards (as was alledged) mollified, by the Commons preſſing only to paſs the Bill for taking away the Biſhops Votes in Parliament.

Ibid. 302. The Bill therefore, for taking away the Biſhops Votes, and for diſabling them to exerciſe any Temporal Office, paſſed readily through the Houſe of Commons, and, with ſome Delay and Oppoſition, it paſſed alſo the Lords, and after the Royal Aſſent was given, as is before (under the Head of the Queen's Power and Influence) related.

Ibid. 307. My Lord *Clarendon* called this Bill a violent Act, and the Removing a Land-Mark, and not a Shaking, but Diſſolving Foundations.

On the other Side, the Commons Alledged, *That the Removing out of the Houſe of Peers* 27 *Abbots, and two Priors,* (who, at that Time, were Spiritual Lords of Parliament) *was a Precedent in Point.*

SECT.

SECT. LXXXV.

Debates *about the Powers and Privileges of Parliament in General.*

This was a large Field for Diſputations, and therefore it is neceſſary to obſerve the ſeveral Sorts of Privileges that were Controverted, *viz.*

I. *What Sort of* Privileges *the Noble Hiſtorian allows to be Legal and Neceſſary, and the Manner how the ſame had been uſually Inſiſted on, and Vindicated.*

II. *What Sort of* Privileges *the Parliament Claimed and Aſſerted.*

I. *As to the firſt Sort of Privileges,*

My Lord *Clarendon* is pleaſed to write, *That the Wiſdom of former Times, had kept the* Juriſdiction *of Parliament, from being Limitted or Defined*; for that it was agreeable to the Nature of the ſupreme Court, to have an *Unlimited Juriſdiction*, and ſaid, *That, becauſe a Violence offered to the* Freedom *of any one Member, is a Violation to all the Reſt*; (As if a Council conſiſts of Threeſcore, and the Door to that Council, be kept by Armed Men, and all ſuch whoſe Opinions are not liked, kept out by Force) No doubt, the *Freedom* of thoſe within, is Infringed, and all their Acts are Void and Null, as if they were Locked in, and kept without Meat, 'till they Altered their Judgments.

And therefore you ſhall find in the Journals of the moſt ſober Parliaments (as Lord *Clarendon* writes) That upon any Eminent *Breach of Privileges*, as alſo upon the *Commitment* of any Member, for any thing ſaid, or done, in the Houſe, ſometimes, upon leſs Occaſions, that Houſe which apprehended the Treſpaſs, would Sit **Mute**, without Debating and Handling any Buſineſs, and then Adjourn; and this hath been practiſed many Days together, 'till they had Redreſs, or Reparation, and their Reaſon was, Becauſe their *Body was Lame*, and what was befallen One Member, threatned the Reſt; and the Conſequence of one Act, might extend itſelf

itſelf to many others, which were not in View, and this made their Privileges of ſo Tender and Nice a Temper, that they were not to be Touched, or, in the leaſt Degree, Trenched upon.

Clarendon, Vol. I. 484. His Lordſhip is pleaſed to Aſſert, *That* Privilege *of Parliament, doth not extend to Treaſon, Felony, or Breach of the Peace, or to the Refuſal to find Sureties for the Peace.*

Vol. II. 397, 398. And that there can be no *Privilege*, of which the Law doth not take Notice, and which is not pleadable by, and at Law; but then he writes, The Parliament are the only *Judges*, what ſhall be a Breach of thoſe Privileges, and what Puniſhment ſhall be Inflicted for that Breach; the Truth and Clearneſs of which, would appear by Inſtances: If I am Arreſted by Proceſs out of any Court, I am to Plead in that Court, That I am a Member of Parliament, and that, by the Privilege of Parliament, my Perſon ought to be free from Arreſts: Upon this Plea, the Judge is Bound to **Diſcharge** me, and, if he does not, he is a *Criminal*; as for any other Treſpaſs againſt the Law, but the Puniſhing the Perſon who hath made this Infringement, is not within his Power, but proper to that Juriſdiction againſt which the Contempt is made: Therefore, that Houſe of which I am a Member, upon Complaint made of ſuch an Arreſt, uſually ſends for the Perſons Culpable, the Party at whoſe Suit the Arreſt is made, and the Officers who Executed it, and Commits them to Priſon, 'till they make Acknowledgment of their Offence: But that Houſe never ſends, at leaſt never did 'till this Parliament, any *Order* to the Court out of which the Proceſs Iſſued, to Stay the Proceedings at Law, becauſe the *Privilege* ought to be legally Pleaded: So after the Diſſolution of the Parliament, if I am Arreſted within the Days of Privilege, upon any Plea of Privilege, the Court **Diſcharges** me; but then the Party that Arreſts me, eſcapes Puniſhment 'till the next Parliament, the Judge having no more Power to Commit the Man that Sued or Arreſted me, than he hath to Impriſon the Man for bringing an Action at Law, when he hath no good Title, neither is he Judge of the Contempt.

Again, If a Man brings an Information, or an Action of the Caſe, for Words ſpoken in Parliament, and I plead, *That the Words were ſpoken by me in Parliament, when I was a Member there, and that it is againſt the* Privilege *of Parliament, that I ſhould be*

be Impleaded in any other Place, for the Words I ſpoke there, I ought to be **Diſcharged** from this Action, or Information, becauſe this Privilege is known, and pleadable at Law; but that Judge can neither Puniſh, nor Examine, the Breach of Privilege, nor Cenſure the Contempt; and this is the true and proper Meaning of the old Received *Axiom*, that they are *Judges* only of their own Privileges.

And, indeed, theſe two, of *Freedom from Arreſts*, for their Perſons (which Originally hath not been of that Latitude, to make a Parliament a Sanctuary for Bankrupts, where any Perſon Outlawed, hath been declared Incapable of being returned thither a Member) and of *Liberty of Speech*, were accounted their Chiefeſt Privileges of Parliament; for their other, of Acceſs to the King, and Correſpondence by Conference with the Lords, are rather of the Eſſence of their Councils, than Privileges belonging to them.

But, with my Lord's Leave, it may be ſaid, *That* Freedom *from Arreſts, and* Liberty of Speech, *are of the Eſſence of their Councils; for Arreſts and Impriſonment, are Inconſiſtent with that Eſſence.*

SECT. LXXXVI.

VI. **Debates** *about the particular* Privileges, *Claimed and Aſſerted by this Parliament, in Relation to the Impeachment of the Five Members, and the King's Entry of the Houſe to Seize them; and whether ſuch Entry was a Breach of the Privilege of Parliament, upon the Problem before mentioned.*

The Parliament Declared, *That no Member could be Arreſted upon any Pretence whatſoever; no, not in the Caſe of Treaſon, without firſt Informing the Houſe, (of which he was a Member) of the Charge, and of the Evidence againſt him, and Receiving their Leave and Direction, for the Proceeding againſt him.*

And they added this Logick, *viz. Becauſe, if a Man ſhould be Committed, and Impriſoned, as ſoon as the King Accuſed him of High Treaſon, the Parliament might, in Conſequence, be, by ſuch a Proceeding, Diſſolved, ſince he might ſucceſſively Accuſe one after another, until the whole Body ſhould Stand Accuſed;* Clarendon, Vol. I 403, 484, 386.

and that That would Destroy the very Being *of Parliaments.*

Clarendon, Vol. I. 397, 398. That they are the only *Judges* of their own Privileges, and, therefore, whatsoever they declare to be their Privileges, was such, otherwise, whosoever determines, *That it is not so,* makes himself *Judge* of that, whereof the Cognizance only belongs to the Parliament.

Vol. I. 592. They Argued, *That the Sitting of the Parliament, Maintains the* Law, *which* Upholds *the Privilege of Parliament, which* Upholds *the Kingdom.*

These General Notions of the Privileges of Parliament, being premised, the particular Species of the Breaches of Privilege, come now to be Treated of; and those were these;

I. *The Impeachment of the Lord* Kimbolton, *and the Five Members.*

II. *The King's going in Person, attended with many Armed Gentlemen, to, and Entering, the House of Commons, to Seize them, which were the Questions Controverted, whether they were Breaches, or not.*

Vol. I. 361. The Commons Insisted, That the King's *Declaring* in the House, *That he would take the Five Members, where-ever he found them,* was an Evidence, That he meant himself to have brought *into the House,* that Force which he brought *to the House,* to Arrest them, if they had been there; for his Majesty's Desire, signified before to the House, by his Serjeant at Arms, to Deliver them up, Implied, and Inferred, a Power in the Vol. I. 391. House, to Deny, or Keep them; and that the King's granting Vol. I. 362, 375, 381, 403. *Warrants under his own Hand, to Arrest* them, was Illegal; and that the very Being of Parliaments was, by that Proceeding Shaken.

Most Unhappy was this Attempt, because it made a Precedent for *Cromwell,* and the Army, afterwards, to Imitate the Example, and to Extirpate, for some Time, the very Being of the Parliament.

That

That this Impeachment was Illegal, becauſe the Judicature of the Lords, and the Impeachment both, Contradicted *Magna Charta*, which had provided, That every Subject ſhould be Tried for his Life, *Per Pares, vel per Legem Terræ*, which a Commoner could not be, in this Caſe, if the Proſecution were at the King's Suit. Clarendon, Vol. I. 396.

That *Herbert* the Attorney General, upon his Examination Declared, *That he had neither framed nor adviſed the Articles of Impeachment, nor knew any Thing of the Truth of them, nor could undertake to prove or juſtify them; but that he had received them from the King's own Hand, and was by him Commanded to exhibit them*; and thereupon the Commons divers Times petitioned the King to diſcover the Names of thoſe who were his Adviſers of that Proſecution; and, moreover, they impeached and puniſhed the Attorney General, for breaking the Privileges of Parliament. Ibid. 282, 394.

In this Proſecution of the Attorney General, there happened a remarkable Inſtance of the *Privilege* of Parliament, *viz.* the Commons Declared, *That the Intereſt of all the Commons in* England *was involved in the Matter of that Breach of Privilege; and that if any Commoner preſumed to be of Counſel for any Perſon accuſed by the Commons, in a Matter which tended to ſubvert* All *their Privileges, he ſhould be treated as an Infringer of them*; and thereupon no Counſel would, nor did, on the Behalf of the Attorney General, meddle further in that Buſineſs. Ibid. 285, 483.

In this Month of *January* 1641. the King on the one Hand vehemently preſſed *Wariſtoun*, to deliver up to him the Original Engagement, ſigned by the *Inviters*; whereby they had ſollicited the *Scots* to invade *England*, to the Intent to enable his Majeſty to prove the Impeachment. On the other Hand, the *Inviters* preſſed *Wariſtoun* with the Obligation of his *Oath of Secrecy*, and the fatal Conſequences impending over both Nations; *Wariſtoun* excuſed himſelf to the King, on the Account of his Oath; and then cut out the Names, and ſent them to each *Subſcriber*: After which, and when the Inviters, found themſelves thus ſecured; the Lords and Commons petitioned the King, either to ſend his Proofs, and proceed Ibid. 395.

ceed againſt the accuſed Members, or declare them innocent, and himſelf to be ill-adviſed.

To which the King anſwered, He was ready to proceed; but deſired it might be firſt reſolved, Whether he was bound to proceed on the Impeachment, or was at Liberty to prefer an Indictment, or had his Choice of either, before which it was unfit to diſcover his Proofs.

Clarendon, Vol. I. 396. The Commons inſiſted, *That they were firſt to ſee the* Evidence *his Majeſty had to prove the Guilt, before they could give Direction for the Manner of the Proſecution and Proceeding*; which they grounded on their Declared Maxim, *That no Member, for what Offence ſoever, could be arreſted or proceeded againſt by the King, but by Conſent of that Houſe of which he was a Member*; which Conſent could not be given or denied, by any other Meaſure than the Knowledge of the Crime, and of the Proof, upon which ſuch Member ſtood accuſed.

Ibid. 467. The Commons after Charged and Arraigned the Impeachment of the five Members, and the Proceedings thereon, as a ſtrange and unheard-of Breach of the Laws, and the King was brought even to confeſs it, ſo that the Parliament appeared to be in this Queſtion victorious.

Ibid. 508. In Fact, the Impeachment of the five Members for High-Treaſon, for *Inviting* and Soliciting the *Scots Invaſion*, was the moſt Impolitick Proſecution that could poſſibly be undertaken, when it is conſidered, That the King himſelf had aſſented to the Paſſing an Act of Parliament in *Scotland*, whereby the *Scots* Invaſion of *England* was *Juſtified*, to be done according to the Law of *Scotland*; if therefore the King himſelf had *Approved* of the Invaſion, which the Principals had done, as Lawful and Right, how could the *Inviters* or Acceſſaries be Criminal.

The Commons argued, *That the King having refuſed to paſs a Bill whereby the impeached Members were to be* Cleared *and* Juſtified; for that the Preamble of the Bill was, as his Majeſty alledged, againſt his Honour; and, moreover, for that
Ibid. 55. the Bill provided, *That no Member, although accuſed for High Treaſon ſhould be Arreſted or Impriſoned ſitting, the Parliament, without Leave of the Houſe*; his Majeſty did, by that Refuſal

Avow

Avow the Matter of that Accuſation, although he had *Deſerted*, for the preſent, the Proſecution, offering to paſs a Bill for their Acquittal of their Offences, which intimated, *That they muſt* Deſert *the Avowing of their own Innocency*, whereas ſuch a *Deſertion* would more *wound* them in *Honour* than *ſecure* them in Law: They further Argued, *That the Facts alledged in that Preamble were but of the ſame Nature with other Facts, which his Majeſty had allowed to be illegal in the Preambles of other Bills paſſed in this Parliament.*

Arguments made on the King's Behalf (*viz.*);

The King, at firſt inſiſted, *That his* Entry *of the Houſe of Commons was a gentle Act of Grace and Favour, although Violence had been juſtifiable, to puniſh Treaſon.* Clarendon, Vol. I. 371.

The King ſent a Meſſage from *Windſor* wherein he took Notice, *That ſince the Proceedings againſt the Accuſed Members, were conceived to be illegal, his Majeſty therefore waved his former Proceedings, and ſaid he would proceed againſt them in an* unqueſtionable Way; and this was called a Meſſage of Retraction. Ibid. 386.

But this left a Time for Proſecution, and though the *Errors* in Form were conceded to, yet the Subſtance and Matter of the Accuſation was ſtill adhered to. Ibid. 387.

The King finding that his principal Evidence was deſtroyed, by *Warriſtoun's* cutting out the Names of the Subſcribing *Inviters*, was pleaſed to ſend a Meſſage to the Parliament, Declaring, *That as he had once conceived he had Ground enough to* Accuſe *the five Members, ſo now he found as good Cauſe wholly to* deſert *any Proſecution of them.* 2 Feb. 1641.

The King afterwards *admitted, That his going in Perſon to the Houſe of Commons, on the 4th of* January, 1641. *was a* Breach *of the Privileges of Parliament.* Clarendon, Vol. I. 432.

And thus this impolitick Conteſt, which put into a Flame the whole Nation, was laid aſleep, but not extinguiſhed; but what were thoſe good **Cauſes**, which cauſed his Majeſty to *Deſert* that Proſecution, remain, as yet, not fully Diſcovered; for it may be reaſonably Conjectured, his Majeſty found, That

the Diſturbing his Government by Arbitrary Power, and the Reſcuing the Conſtitution and the Rights of the two Eſtates of Lords and Commons, from under the Miniſters Oppreſſion, would warrant and juſtify the Legality of the *Invitation*, and Sollicitation of the *Scots* Invaſion; and that his Majeſty's Evidences of that ſuppoſed Treaſon (although he had the Original *Invitation* to produce) were not ſufficient to Encounter the Spirit of the Conſtitution; for the People were, with the Deliverance, which that Invaſion produced, *Over-joyed*; and the Merit of it cauſed the *Scots* to be almoſt *Idoliz'd*.

Or, (which is the ſame Thing) it may be preſumed, That the King found his Power, not equal to his Undertaking (to wit) to maintain the Logick of his Proceedings; for if his Power could maintain that **Invitation** to be Treaſon; then the ſame Power would not fail to maintain, That all the *Fruits* of it (*viz.*) the Acts of Parliament, by which *his Majeſty's Erroneous* Adminiſtration had been *Diſturbed* and Reformed, were obtained by Force and Violence, and ought therefore to be Reſcinded.

SECT. LXXXVII.

VII. **Debates** *about the Laws in general; and whether the King had,* **before** *this Parliament, governed by Arbitrary Power, or not; and whether he did not reſerve in his Mind an Intention or Reſolution to Reſcind the Acts of Reformation paſſed in this Parliament.*

Clarendon, Vol. I. 161. The Parliament argued, (and their Arguments are confirmed by the Noble Hiſtorian) *That there was no Queſtion the King, when he came to* York *in* 1640. *to oppoſe the* Scotiſh *Invaſion, did not think of Aſſembling this Parliament, but was wrought to it by Degrees; and that the Prevailing Counſellors had infuſed into his Majeſty this Notion*, viz. That the Paſſing of all the Acts of this Parliament, and particularly of the two Acts for *Preſſing Soldiers* for *Ireland*, and for the taking away the *Biſhops Votes*, was made by direct **Violence**, and almoſt by *Force of Arms*; and that the *Violence* and Force uſed, in procuring thoſe Acts, rendered them abſolutely *Invalid*; and that his Majeſty's Aſſent to, or Confirmation of ſuch Acts, could not make them Valid, which were in themſelves Null.

Ibid. 427, 429, 430.

The

The Argument went further (as the Noble Hiſtorian informs us) which convinced the *Scots*, viz. that the King's Opinion was, *That his* **Conceſſions** *in* Scotland, *in* September *and* October 1641. were extravagant, and that ſome about his Majeſty had aſſured him, *That when the Troubles of the late Storm could be perfectly calmed, they would Reverſe and Repeal whatſoever was then Unreaſonably Extorted.* Clarendon, Vol. I. 309. Vol. I. 310. Vol. I. 459. 465.

And this Argument was Confirmed by the King's firſt Meſſage from *York*, in 1642; for when his Majeſty found his Reception there, beyond his Expectation, by the great Concourſe of Gentry, and Men of Ability, he Reſolved to Treat the Two Houſes in another Manner, and therefore Declared, *That as he would Deny them Nothing, that was fit for them to ask, ſo he would Yield Nothing, that was Unreaſonable for him to Grant; and that he would have Nothing* **Extorted** *from him*: And the Noble Hiſtorian writes, *That he would no more be Swagger'd into Conceſſions*; which Implied, as if his Majeſty's Sentiments were, *That the former Acts had been* Extorted, *and that he had been* Swagger'd *into thoſe Conceſſions.* Vol. I. 459, 473.

The Parliament therefore Concluded and Argued, *That the King had a* **Diſinclination** *to the Laws of the Land, and that he had Conſented to all the Laws made in this Parliament, and eſpecially, for granting to the Adventurers, the Eſtates of the* Iriſh *Rebels, very unwillingly, and with great* **Reluctancy**, *and meant to Avoid them.* Vol. I. 465.

They Argued moreover, *That if the Miniſters could Maſter this Parliament by* **Force**, *they would Uphold the ſame Power, not only to Aboliſh all the good Laws, which were made this Parliament, but to Deprive the Nation of all Parliaments.* Vol. I. 593, Vol. II. 18.

The Active **Inviters**, therefore, in their Debates about the Grand Remonſtrance, which was Voted in *November* 1641, Argued, *That they were in Danger of being Deprived of all the good Laws which they had gained in this Parliament, if great Care and Vigilance, were not uſed to Diſappoint ſome Counſels, which were then Entertained* (meaning, the Grand Reſolution of Impeaching the Five Members) *which the Miniſters hoped, and expected, would Unravel all the* **Conceſſions**, *and Reſtore the Exerciſe of that* **Arbitrary** *Government, without*

out Parliaments, or, at leaſt, without free ones, which had been ſo lately Diſturbed *and Removed.*

D'Orleans p. 41. Theſe Arguments of the Parliament, have been ſince Confirmed and Proved, by the Jeſuit *D'Orleans*, who was, by the Popiſh Cabal, unqueſtionably, let into the true Secret: His Words are theſe, *All Mankind believed, that the King did not Grant ſo much, but in Order to Revoke all; and that he, underhand, was preparing for* War, *that the Sword might Cut all thoſe Knots, he made with his Pen.*

And for this Purpoſe, *D'Orleans* gives a good Reaſon, why the Book called, *Eikon Baſilike* (if it were Genuine) is, in this Caſe, of no Credit.

This Argument, *That the King intended to Reſcind all the Acts of Reformation, paſſed in this Parliament*, was ſo Popular, and gained on the People ſo Univerſally, that there was Nothing which more Preſſed the King, nor ſo Obliged him to deliver himſelf from that Imputation, becauſe no Man that believed it, would Adhere to, or Aſſiſt him.

Clarendon, Vol. I. 369, 455. The King was therefore pleaſed, ſometimes, to Argue, *That the* Law *of the Land was the Inheritance of every Subject, and the* only *Security for his Life, Liberty, and Eſtate*: And, in his Speech, made on the 9th of *March*, 1641, to the Committee of Parliament at *Newmarket*, his Majeſty Taunted the Parliament, by ſaying, *What would you have? Have I Violated your Laws?*

Ibid. 451. His Majeſty alſo declared, *He was not only reſolved to keep the Laws himſelf, but to maintain thoſe Laws, and require Obedience to them from all his Subjects.*

Ibid. 472. 655, 266. That his Majeſty was reſolved to Build upon a *ſure Foundation*, the Law of the Land, and ſo Shelter, himſelf under that Law, preſuming, he himſelf, and the Law together, would be Strong enough for any Encounter.

Ibid. 455, 512, 538, 598. Husband Coll. 561. The King was pleaſed to Condeſcend to Argue, *That his own juſt Rights were* Part *of that Law of the Land; and that he, as King, was not only a* Part, *but an* Eſſential Part *of the Parliament; and that the Parliament, or Two Houſes, were*

were an Eſſential Part *of the Conſtitution; and that no King could attain Happineſs without them.*

The King was pleaſed to make a Repertory of the great Conceſſions he had made, ſince the Commencement of this Parliament, *viz.* The Acts for the Triennial Parliament, for the Continuance of this preſent Parliament, for *Relinquiſhing his Title of Impoſing* Taxes upon Merchandize, and his Power of *Preſſing* Soldiers: The Acts for taking away the the Star-Chamber, the High Commiſſion Courts, and the Votes of the Biſhops: The Acts for Regulating the Council Table, the Foreſts, the Scannary Courts, and the Clerk of the Market; but he was pleaſed to Omit the Two Acts for **Diſavowing** the Ship-Money, and for Granting to the Adventurers, the Eſtates of the *Iriſh* Rebels, and his Majeſty was pleaſed to call theſe Laws, Acts of his Juſtice, and ſingular Favour; that they were Excellent Laws; and that he would not Repent of them, but Obſerve and Maintain them, without Violation; and, moreover, the King was pleaſed, in 1642, at the Head of his Little Army at *Wellington*, in *Shropſhire*, to make this Proteſtation, *That he would* **Govern** *by the known Laws of the Land, and, particularly, would* **Obſerve** *Inviolably, the Laws he had Aſſented to in this Parliament.* Clarendon, Vol. I. 463, 466, 505, 685. Vol. II. 14, 17.

But of all the King's Arguments, None were ſo Clear and Impartial, as that Part of his Anſwer to the Nineteen Propoſitions, before made Uſe of, in the Chapter of Evidences, to prove this Conſtitution, Page 142. for there his Majeſty did Allow, and Admit, many of the Legal Rights, which juſtly belonged to every one of the Three Eſtates of King, Lords, and Commons; and one would have thought, that that Declaration which was ſo Plain and Honourable, might have been the *Foundation* for a good Agreement.

It may be wondred, why the Noble Hiſtorian took no Notice of ſo Bright a Part of that Anſwer, unleſs the Omiſſion infers Some-body's Inſincerity.

But the Omiſſion in *Echard*, of that material Part, is not diſagreeable to the reſt of his Repreſentation; for that Hiſtorian has ſpared no Pains to Repreſent his Majeſty's **Departing** from the Rules of Law, to an Arbitrary Power, to be in all Things **Right**, and the Parliaments Proceedings, to Reduce that Arbi-

trary Power, to be, in all Things, Wrong; whereas this Royal Declaration, was a *Contradictory* Judgment, proceeding out of the King's own Mouth, whereby moſt of the Steps of his own Government, Before this Parliament, Stand Condemned as Illegal; and yet this Author has rack'd his Invention to Honour, and even Adore, the one, and Diſparage the other, with the moſt Affecting Epithets.

But although this Part of the King's Anſwer was Ingaging, yet other Parts were Diſobliging; for notwithſtanding thoſe Juſt Acknowledgments of the Rights and Powers of the Two Eſtates of Lords and Commons, and that the Regal Powers were Relative, and Limited, yet his Majeſty told them, *That he ſhould always look upon Parliamentary Advices, as Advices, and not as Commands; and upon them, as Counſellors, not as his Tutors; and upon himſelf, as their King, not as their Pupil*: By which Corroſive Explication, the Value of thoſe Conceded Rights, Powers, and Privileges, was Subſtracted.

Clarendon, Vol. I. 622.

But at other Times, the King was pleaſed to Aſcend Above all human Laws, and Above this Conſtitution, which his Majeſty had owned to be the Conſtitution, and to inſiſt, That his Majeſty's Rights were Antient, Unqueſtioned, and Undoubted; and that the ſame were Originally, and Primarily, Settled and Eſtabliſhed on him, and his Poſterity, by God himſelf; and that having ſo Received a Being, or Exiſtence, his Rights were only Confirmed and Strengthened, by ſubſequent Acts done by his People.

This Declaration ſeemed ſurprizing, becauſe it *Sapped* or *Reclaimed*, whatſoever he had ſaid touching his Adherence to the Conſtitution, and to the Laws of the Land, which are, undoubtedly, Humane, and which, conſidered as Humane, could never Take away, or Controul, any *Rights* that were *Prior* in Time, and Settled and Eſtabliſhed on his Majeſty, and his Poſterity, by God himſelf; and this Declaration ſeemed the more Surprizing, becauſe it was a Sort of Abdicating, or Renouncing, all Rights Derived from this Human Conſtitution.

Vol. II. 467.

The Parliament, by Way of Reply, Argued, They were ſorry to have ſuch plentiful Matter for an Anſwer to that Queſtion, *Whether his Majeſty had Violated their Laws?* They beſought his Majeſty to remember, That his Government, as it

was

was in a great Part managed by his Miniſters, before the Beginning of this Parliament, conſiſted of many Continued and Multiplied Acts of Violation of the Laws; in ſome of which, his Majeſty had Avowed himſelf to be, both Commander and Actor; and which Violations appeared, Clarendon, Vol. I. 563.

I. By his Speeches to the Parliament, when his Majeſty told them, *They were to Continue, or not to be, at his Pleaſure, that if they failed to give Supplies, he muſt uſe ſuch* **Means** *as God had given him; That he would puniſh the Members for what they had ſaid and done in Parliament*; for the Conſtitution had denied ſuch Treatment to be given or received.

II. By his cauſing the Members to be, at ſundry Times, *Arreſted*, Sitting the Parliament, and ſome of them, even at the Door of the Houſe of Commons; for what they had ſaid and done in Parliament, with theſe aggravating Circumſtances; 1. *Their Impriſonment was without Bail or Mainprize*; and, 2. *The* **Arreſts** *were made, by his Warrant, Signed with his Majeſty's own Hand; againſt which Wrongs, there could be no Remedy; except ſuch as muſt ariſe, from a Diſſolution of Government.*

III. By his Majeſty's denying, to ſome Peers, their Writs of Summons to Parliament, and by ordering others, who had them, not to appear in Parliament; and by Impriſoning the Earl of *Arundel* in the Tower, Sitting the Parliament.

IV. By proſecuting, fining, and impriſoning three Members, Sir *John Elliott*, *Denzill Holles*, and *Benjamin Valentine*, for Complaining and Arguing in Parliament againſt the King's Miniſters; for Exerciſing Arbitrary Power, although Liberty of Speech, touching the State and Government, and making Inquiſition for Grievances, was their Fundamental Right, Power, and Privilege.

V. By his Majeſty's pardoning a Malefactor (Dr. *Manwaring*) after he had been *Condemned* in Parliament, for preaching up the Doctrine of **Arbitrary Power**, *That the King, in Caſe of Danger, might* **Impoſe** *Taxes, and Levy Money, without a Grant thereof in Parliament*: And, moreover, by Rewarding the Doctor with the Biſhoprick of St. *David's*, for that Service.

VI. By

VI. By Laying aſide, and not permitting, for many Years, the Lords and Commons to Aſſemble in Parliament, and forbidding the People to *preſcribe* any Time (*i. e.* to petition for holding Parliaments); which was, as the Commons alledged, Either a Failure or Denial of Juſtice.

VII. By numerous Inſtances of illegal Impoſitions of Taxes, and Levying Money, without a Grant thereof in Parliament; (to wit) by Levying five Subſidies; although the Bill for granting them, was only Depending, and never paſſed the Houſe of Commons; by Requiring the People to lend him ſuch Sums of Money, as he impoſed and required, and impriſoning without Bail or Mainprize, ſuch as refuſed; by Exacting and Levying the Cuſtoms of Tonnage and Poundage, and Duties on Wines, and by Exacting great Sums on Pretence of excuſing ordinary Freeholders from the Order of Knighthood; and, above all, by *Impoſing* and Levying the Tax of Ship-Money.

VIII. By the Illegal Proceedings of the Star Chamber, the High Commiſſion Court, the Council Table, the Foreſt Courts, by Shedding Blood, by Martial Law, by Monopolies, *&c.* To which might be added, The Provoking Inſtance of Delivering up to a Neighbouring Potentate (the *French* King) a Squadron of the Naval Forces of *England*.

The Parliament added, *That the* **Preſſures and Sufferings** *of the People, under this Method of Governing, were Innumerable.*

Husband's Coll. 515, 517, 558, 559.

Clarendon, Vol. I. 471.

Husband's Coll. 559.

The King, by Way of Anſwer, did admit, *That* **before** *this Parliament, he had* **Departed** *from the known Laws, to an* **Arbitrary Power**; *and that great* **Miſchiefs** *had grown from the* **Exerciſe** *of that Arbitrary Power*; *and that the* **Preſſures and Sufferings** *of his Subjects, had proceeded from the long* **Intermiſſion** *of Parliaments*; *and that, therefore, his Majeſty had reſolved, without putting any Gloſs upon his own* former **Commands**, *or Endeavouring to make any* Excuſe *for his Miniſters*, That the **Meaſure** of his *Juſtice* and Favour, by Way of Reparation, ſhould far Exceed the Oppreſſions and **Sufferings**, his good Subjects had Undergone **by his Majeſty**.

His

His Majesty having mentioned his *Justice* and *Favour*, he seemed to Confine the Exercise of *Arbitrary* Power, and the *Sufferings* of his Subjects, to the Proceedings of the Star Chamber, High Commission Court, and Council Table; and that his Majesty had, in *Justice*, Passed Acts to Redress those Grievances. Husband's Coll. 559.

But as to the **Pressures** of his Subjects, which they Complained they had Undergone, under that Power which his Majesty had Assumed, to **Impose** Taxes, the Business of the Clerk of the Market, and Knighthood, his Majesty was pleased to say, *That his Passing the Acts to Disavow that* **Power**, *and Redress those* Grievances, *were Acts of his* Favour; for his Majesty insisted, That the **Ship-Money** had been Adjudged Legal; and that his Title and Power of *Imposing* Taxes on Merchandize, had been Adjudged Good, and had been *Exercised* by his Ancestors; and though sometimes Disputed, yet had never been Resolved against, by any Judgment in Parliament, nor 'till now Yielded: That his Rights, touching the Order of Knighthood, and the Clerk of the Market, were Unquestionable, and yet his Majesty had **parted** with all those Rights, without Disputing them.

His Majesty, therefore, *Recapitulated* his Condescentions, and Acts of his *Justice*, and singular Favour, since the Commencement of this Parliament, In *Granting* the Judges to be *Quam diu se bene gesserint*; In *Bounding* the Forest Laws; In permitting *Justice* to be done upon Delinquents; *In giving the Laws their Liberty*; In *Exposing* his Servants to Tryal; In **Parting** with his Right in the Ship-Money; and his Title and Power to *Impose* on Merchandizes; and that he understood well the Rights he had **parted** with: And therefore his Majesty *Expostulated* with the Parliament, for looking back so many Years, to Things for which he had given them Ample Reparation; neither looked he to be *Reproached* with the Actions of his *Ministers then* against the Laws, whilst he Expressed so great Zeal for the *present Defence* of them. Sanderson, 427, 428, 462, 469, 471, 502. Clarendon, Vol. I. 471.

The Parliament, on their Part, Argued, That his Majesty's Admissions were, doubtless, **Just**, and particularly, that the **Sufferings** of the People, during the long Intervals of Parliament, proceeded from the Failure of **Assembling** Parliaments;

and that, therefore, when his Majeſty **Departed** from the known Laws (i. e. From the Conſtitution) and Exerciſed an Arbitrary Government, without Parliaments, it was Inconſiſtent with that Truſt which the Law had Repoſed in the Kingly Office; and was, during that Time, Illegal; and the **Preſſures** of the People, with which the Miniſters Cruſhed them, againſt Law, were Grievous, and the rather, for that his Majeſty admitted, That he had **departed** from the *Known Laws*, which Inferred, That he had Erred againſt *Knowledge*.

Clarendon, Vol. I. 162, 161.

The Parliament alſo urged, What Dependance could be Built on ſuch ſlender Reſolutions? That the Diſeaſe was not *Killed*, nor *Dead* at the Root; for that there was no Queſtion, that his Majeſty did not think of Aſſembling a Parliament at firſt, when he went to *York*, in *Auguſt* 1640, to Oppoſe the *Scotiſh* Invaſion; neither did he then think of *Ceaſing* to Exerciſe Arbitrary Power, which, he was well Apprized, was a *Departing* from the known Laws; and that the Penner of his Majeſty's Declaration, had made him Contradict all the late Acts of Parliament, in the very **Points** therein Declared, Enacted, and Condemned; for by thoſe Acts, Deciſions and Determinations had been ſolemnly made, That the King's **Impoſing** the Tax of Ship-Money, was contrary to, and againſt the Laws of the Land, the Liberty of the Subject, and the Right of Property: Unleſs his Majeſty imagined, That his *Judges* had *made* a Law, to give him a Right; and if that were the Caſe, then his Majeſty was both *Judge* and *Party*; for the King *made* the Judges, and they the Law, which *Reſolved* all, into the King's own Abſolute Power, to make a Law, and give himſelf what he *pleaſed*.

Husband's Coll. 515.

And as to the Proceedings about Knighthood, and the Clerk of the Market, the Parliament Argued, That thoſe were become *Uſeleſs*, and Unreaſonable, and, conſequently, were become *Grievances* to the People; and whatſoever becomes ſo, becomes, at the ſame Time, *Illegal*, and ought, in Juſtice, to be Redreſſed, and therefore thoſe Acts, were Acts of **Juſtice**; to which his Majeſty was obliged, by the Conſtitution, to give the Royal Aſſent, and were not barely Acts of *Grace*, or *Favour*.

The Parliament Argued, That this Contradiction being compared with his Majeſty's firſt Meſſage from *York*, 1641-2, (where

(where he found the Concourſe to him of Nobility, and Men of Ability, beyond his Expectation) In which he Declared, *That he would have Nothing* **Extorted** *from him, nor be* (as Lord *Clarendon* writes) *any more* Swaggered *into Conceſſions, together with the Proceedings now, and ever ſince, the firſt Sitting of this Parliament*; whereby it appeared, That ſuch Perſons as were *Favourers* of, and Friends to the *Exerciſe* of that Illegal Power, and to thoſe Suggeſtions of *Neceſſity*, and Imminent Danger, which had Induced his Majeſty to Exerciſe that *Arbitrary Power*, were continually *Preferred* and Countenanced; and that, on the other Hand, *ſuch Perſons* as did Appear againſt, and did *Oppoſe* the Exerciſe of that Illegal Power, were, by his Majeſty, Daily *Diſcountenanced*, and *Diſgraced*. Clarendon, Vol. I. 459, 473. Vol. I. 561.

That all theſe Circumſtances did confirm that **Opinion** of the People, which was become almoſt General, That thoſe Acts of his Majeſty's *Juſtice* and *Favour* (without the ſecret Operation of the *Scots* **Encampment** in *England*) had never been obtained; and that therefore thoſe *Arbitrary* Powers, called his Majeſty's Rights and Prerogatives, would (whenever that **Force** could be Removed) be *Reſumed*.

The Parliament therefore Argued, That if his Majeſty could, after ſuch a Parliamentary Excluſion, and Diſclaimer of Right, Retain a Notion, That he **Parted** with any *Right*, and would, as he did, publickly declare that Opinion to the World; **no Act** of Parliament could be of any Conſideration, between the Crown and the People, longer than the People had Power to Aſſert its Validity.

And to all theſe Allegations, the Parliament added, That his Majeſty's private Sentiments were abundantly Clear, from his Inſtructions to his Envoy (*Cotkram*) to the King of *Denmark*, to Apologize for his Majeſty's giving the Royal Aſſent to the ſeveral Acts of this Parliament, which, in their Preambles, had Acknowledged and Condemned the ſeveral Inſtances of his *Miſgovernment*; to wit, That there was a Dangerous Combination of his Majeſty's Subjects, to obtain a **Reformation** of pretended Abuſes of Government, and of Miniſters of State, in which his People *generally concurred*; and that *Succeſs* in that Deſign, would be a Dangerous Precedent to all **Monarchs**: That the Nature of the People's Proceedings, would not admit Sanderſ. 692.

any

any Foreign Power to be Intereſted in *Suppreſſing* that Deſign, without giving them the Advantage of ſcandalizing his Majeſty's Intentions, and Alienating his People's Hearts univerſally; and the rather, for that great Jealouſies had been Diſperſed and Fomented, of his Majeſty's *Foreign* Treaties, for *Forces*, to Oppoſe and Suppreſs thoſe **Deſires** of Reformation, and the Promoters of them; And that, therefore, his Majeſty's preſent, and immediate Compliance, in Paſſing thoſe Acts, was unavoidably *Neceſſary*, leſt any **Publick** Oppoſition on his Part, tending to Diſappoint their great Expectations, might have occaſioned a **General Revolt** throughout the Kingdom.

The Parliament therefore concluded, from all the King's Proceedings, That his Majeſty Entertained a private *Diſſatisfaction* with thoſe Reformations, and would, if he had Power, either Diſannul them, or **Depart** from them, and Reſume the Exerciſe of his former Government; and, particularly, that there ſtill Remained in the King's Mind, an Immoveable **Inclination** to Recover back the pleaſing Power of **Impoſing** Taxes, and Levying Money, without a Grant thereof in Parliament.

The Parliament further Argued, That as his Majeſty's Words had not, ſo neither would the Acts of Parliament, to which his Majeſty had given the Royal Aſſent, afford of themſelves any Security, ſo long as the Evil Counſellors about him, were Adhered to, and not Removed and Abandoned; as witneſs the Acts called, *The Petition of Right*, which had been followed with an Inundation of thoſe Taxes, which that Act expreſly Prohibited, and had Declared to be Illegal.

Clarendon, Vol. I. 554.

And as to his Majeſty's *Rights*, which he ſaid were *Settled* and *Eſtabliſhed* by God himſelf, on him, and his *Poſterity*, they privately Argued, That that Settlement muſt neceſſarily appear, by ſome *Evidence*, either written, or unwritten; and therefore he ought to ſhew ſome *Evidence*, how God himſelf had Settled this particular Nation, and People, and their Perſons and Eſtates on his Majeſty, and on his Poſterity; and that if ſuch *Evidence* could be ſhewed, then the Gift and Settlement of his Majeſty's Rights, by God himſelf, would be, not only *Juſtifiable*, but *Indefeazible*; whereas ſuch Rights as wanted the Confirmation of the People, muſt neceſſarily be *Defeazible*; for the Nature of a Confirmation, was to make that Firm and Good,

Good, which was before *Defeazible* and Defective, which could never be ſaid of a Gift and Settlement, made by God himſelf: The Parliament therefore inſiſted, That *De non Apparentibus, & non Exiſtentibus, Eadem eſt Ratio*; and, however, that his Majeſty's Claiming a *Right* Settled on him by God himſelf, was a Diſclaimer, or Renunciation, of any Right Given to, or Settled on, him, and his Poſterity, by this Human Conſtitution; for it is a Rule of Reaſon, which holds all over the World, *That in all Tryals of Rights, if a Man, having a Good Title, will Claim by a Bad one, which, in the Tryal, fails, he ſhall not Deſert his Bad Title, and Reſort to his Good one, becauſe that is not the Right Claimed.*

SECT. LXXXVIII.

VIII. **Debates** *about the King's Abſenting himſelf from his Parliament, and what Powers his Majeſty could, in his own Perſon, Execute, when Separated from them.*

The Parliament very well knew, That if his Majeſty returned to his Parliament, his private Scheme, touching the intended **Alteration**, that was in Part, but not **Wholly, Framed**, would be Diſconcerted, and all the Queen's Foreign, as well as the King's Domeſtick, Negotiations, to make War, Rendered Abortive. Clarendon, Vol. I. 419, 440, 445, 586.

The Parliament therefore Argued, That his Majeſty's wilful **Abſence**, and Alienation from his Parliament, was equal to a wilful *Abſence* and Alienation from his Kingdom, in Regard the Parliament Repreſented the Kingdom. Ibid. 590.

Their Arguments for the *Neceſſity* of his **Returning**, were Drawn from the *Greatneſs* of his Power, when Sitting at the Head, and in a good Correſpondence with his Parliament, and from the *Imbecillity* of his Power, when Separated from them, urging, That whatſoever he did in his own Perſon, either by Signing Warrants, or by verbal Commands, was of no Force in Law, becauſe the reputed **Maxim** of Law was, That **the King can do no Wrong**; and, therefore, if Wrong were done in Matters of State, the Counſellors, if in Matters of Law, the Judges, were Accountable; but if Wrong were done by Warrant, Signed by the King himſelf, or by his verbal Commands, Ibid. 375. Ibid. 549.

the Law had not provided any Remedy to Redreſs thoſe Wrongs, *but what would Reſult from a* **Diſſolution** *of Government.*

Clarendon, Vol. I. 446. They Argued, That his Majeſty's Abſence was the moſt *Miſchievous Effect* of Evil Councils; for it Rooted up the Strongeſt Foundation of the Safety and Honour, which the ſupreme Governor, or Magiſtrate, afforded, and Struck at the very **Being** of the Government, Depriving his Majeſty, in his own Apprehenſion, of their *Fidelity* and *Service*; and them, of his *Protection*, which were the only Bonds of Government and Subjection.

Ibid. 552. That the King's Perſonal *Command*, could no more warrant the Impeachment of the Five Members, without Witneſs, without Evidence, without all Poſſibility of Reparation, in a Legal Courſe, than it could any other Act of **Injuſtice**.

Ibid. That the King cannot be, Either *Relator*, *Informer*, or *Witneſs*.

Ibid. 495. But, above all, the Parliament Argued, That the King's Reſolute *Abſenting* himſelf from his Parliament, was an Evidence, that he *Intended ſome Force* againſt them, and that the *Iriſh* Rebels not only underſtood it ſo, but were Encouraged by it, as if his Majeſty Acted ſuitable to the Deſign for which they took up Arms, and that his Majeſty did Favour, and Allow, thoſe Proceedings.

Arguments on the King's Behalf, *viz.*

Ibid. 475. The King told the Parliament flatly, *That they were not to Expect his* **Preſence**, *until they did ſome Things*, which were well known to be Impracticable; and amongſt others, *That he would never think of his* **Return** *to the Parliament, 'till he firſt had Juſtice for what was paſt, and Security againſt the like, for the Time to come.*

Vol. II. 18. The Noble Hiſtorian is pleaſed to ſay, *That if the King had* Returned *to* Whitehall (*i. e.* To his Parliament) *he had* Juſtified *all their Proceedings, and could never after have* Refuſed *to Yield to whatſoever they Propoſed.*

And

And yet the ſame Hiſtorian informs us, That when the King's Meſſengers came from *Nottingham*, to the Parliament in *Auguſt* 1642. with a Meſſage propoſing a Treaty, ſome of the active Members privately adviſed, *That if the King had any Care of himſelf, or of his Poſterity, he ſhould immediately come to* London, *and throw himſelf into the Arms of his Parliament* (his political Wife) *and comply with whatever they propoſed*; and that at the Return of thoſe Meſſengers to *Nottingham*, ſome about the King, whom he truſted as much as any, and whoſe Affections were as intire to him, as any Mens, privately adviſed his Majeſty, To give all other Thoughts over, and inſtantly to make all imaginable Haſte to *London*, and to appear in the Parliament Houſe, before they had any Expectation of him, and that there would be more likelyhood for him to prevail that way, than by any Army, he was like to raiſe: The Hiſtorian proceeds, and ſays, *That it muſt be* ſolely imputed *to his Majeſty's own Reſolutions, that he took not that Courſe.* Clarendon, Vol. I. p. 11.

It was in theſe Times, and afterwards, the common Queſtion or Demand, Who ſhall be Judge between the King and his People, when the Government is adminiſtred, according to the Law of the Land, and when the Conſtitution is broken or violated? To which Queſtion, it may be anſwered, That no Wrongs are done to the People, but in the Intermiſſions of Parliament; and, that ſome Power or other (and probably the divine Power) hath implanted in the Minds of *Britons*, a ſteady Notion, That the Aſſembling of Parliaments frequently, is a Debt due, in Juſtice, to the Nation, and that the two Eſtates of Lords and Commons, ſo aſſembled, are their Refuge and *Aſylum*, to vindicate them from Oppreſſion, and to redreſs their Grievances; *Britons* know, That thoſe two Eſtates, when aſſembled in Parliament, have, by the Conſtitution a Power to enquire into their Wrongs, and to puniſh the Wrong-Doers; and, therefore, every *Briton* can himſelf judge and tell, when Parliaments are frequently aſſembled, and if aſſembled, whether they are Mal-treated or not; without the Help of any other Judge.

SECT.

SECT. LXXXIX.

IX. **Debates** *about the Military Power, and, particularly the Power over the* Militia, *and in whom that Power, by Law, reſided; and who were to be Judges, and had Power to Declare what was, in that Caſe, the Law.*

In this Queſtion it is neceſſary to relate the Hiſtory of the *Militia-Bill*; The active Members apprehended their Danger to proceed from the King and Queen's private Reſolutions taken (before the Royal Journey into *Scotland* in 1641) to Impeach them for High-Treaſon, and from the publick Rumour, That there was ſomething on the Anvil, that would break the Neck of this Parliament.

Clarendon, Vol. I. 558.

They took a View of the Military Power, which, in caſe of an Impeachment, could ſupport the Proſecution.

Vol. I. 2[illegible], 258, 550.

Lord *Clarendon* relates, how the Queſtions about the Military Power came firſt to be Debated, *viz. That upon ſome Diſcourſe in the Houſe of Commons, about ſome Diſorder which had happened in, or about* Auguſt 1641, *upon, or in the late Diſbanding the Army in the* North, *a Motion was made,* (as by Accident) To conſider of the preſent State of the *Militia,* and the Power of it, and whether it was ſo ſettled by Law, that a ſudden *Force* could be raiſed for the Nation's **Defence,** againſt an unexpected Invaſion, Inſurrection or Rebellion; and that a Bill might be prepared for that End.

The Arguments againſt it, were, *That the Power of the* Militia, *and the Right of making War, reſided only, in the King, and there had never yet appeared any Defect of Power.*

The Arguments for the Bill were, *That the Queſtion was not about taking away from the King any Power that he really had, but to enquire, Whether there were ſuch a Power in him, or where elſe*; and it was Argued, *That there was no ſuch Power in the King*; inaſmuch as it appeared from their own Reſolutions or Votes, *That the late Commiſſions to the Lords Lieutenants of Counties, and their Under-Commiſſions to Deputies,*

ties, Collonels, &c. to liſt and conduct Soldiers, were Arbitrary and Illegal, after which, no Occaſion or Neceſſity would prevail on any Man to Execute ſuch Commiſſions, or on any Body to obey them; and, conſequently, there did appear a Defect *of Power*; and thereupon it was ordered, *That a Bill ſhould be brought in, purporting*, That the Power of the *Militia*, and the abſolute Authority to execute, *&c.* ſhould, for the Space of two Years, be veſted in a certain Number of great Men therein named; and the Bill was read, for the firſt Time, and laid by, as if it were, at preſent, laid aſide.

But upon the Commotions about the impeached Members, the Houſe of Commons reſumed the *Militia* Bill, and after adding thereto a Clauſe for putting all the Forts, Caſtles and Garriſons into the like Hands, as were the *Militia*; they paſſed it, but pending this Bill, the Parliament Moved the King, *That the Magazine at* Hull *might be removed to the Tower of* London; and not receiving a ſpeedy Anſwer, they ſent down Sir *John Hotham* to be Governor, and to draw in ſuch of the Trained-Bands, as he thought proper, to ſecure the Place. Clarendon, Vol. I. 388.

The Lords, after ſome Ruffling likewiſe, paſſed the *Militia*-Bill on the ſecond of *February* 1641. But this Bill being preſented to the King on the 14th of *February* 1641. together with the two Bills, the one for preſſing Soldiers for *Ireland*, and the other for taking away the Biſhop's Votes, the King paſſed the two latter, and Rejected the *Militia* Bill. Vol. I. 415, 389, 428.

The Parliament, being in a Rage for the Diſappointment of the *Militia* Bill, did, in *February* 1641. turn the *Militia* Bill into an Ordinance of Parliament, for ſettling the *Militia*, confining the Extent of the Power to the ſuppreſſing Rebellions, Inſurrections, and Foreign Invaſions, and the Continuance thereof to two Years, and ſent the ſame, together with a Liſt of the Commiſſioners Names, in whom they could confide, to the King for his Approbation and Royal Aſſent.

The King's Anſwer was, *That in a few Days he was to go with the Queen from* Windſor *to* Dover, *in her Journey to* Holland, *and therefore he would conſider of it as a Matter of Importance, and reſpite his Anſwer till his Return.* Vol. I. 434.

Clarendon, Vol. I. 434. The Parliament with Impatience, and in Fear too of the Effects of the Queen's Journey, and of the private Negociations ſent immediately a Petition to the King at *Windſor*, requeſting him to give them inſtantly ſuch an Anſwer, as might raiſe in them a Confidence that they ſhould not be expoſed to the Practices of thoſe (pointing at the Queen and the Papiſts) who thirſted after the Ruin of this Kingdom, and the kindling that Combuſtion in *England*, which they had effected in *Ireland*, from whence they intended to invade *England*.

But the King anſwered, That he would give them a full Anſwer at his Return from *Dover* : And at his Return from thence to *Greenwich*, he ſent them this Anſwer ; He objected not only againſt the Preamble, reciting a dangerous and deſperate Deſign upon the Houſe of Commons, ſuppoſed to be an Effect of the bloody Counſels of Papiſts, but alſo againſt the Form of an Ordinance ; and propoſed the Method to be by Way of Bill ; and that the Power ſhould be, by ſome Law, firſt veſted in his Majeſty, with Power to transfer it over to thoſe Perſons nominated for Commiſſioners.

Ibid. 439. The Parliament being tranſported with Fear and Vexation, immediately voted the Adviſers of that Anſwer to be Enemies, to be miſchievous Projectors againſt the Defence of the Kingdom ; and that if his Majeſty ſhould perſiſt in it, it would hazard the publick Tranquillity.

Ibid. 440. The Parliament ſent another Petition to the King at *Theobald's* ; whereby they repreſented that preſent Time, to be a Time of approaching and imminent Ruin (meaning the Queen's Journey to ſollicit Foreign Forces, and meaning the Pope's *Nuncio's* Sollicitations of the Kings of *France* and *Spain*, to Ibid. 445. Sanderf. 694. furniſh the King with 4000 Men each, to invade *England* ; and meaning the Treaty with *Denmark*, for Men and Arms to be landed at *Newcaſtle*, or the *Holy-Iſland* near *Berwick*, of all which, the Parliament had frequent Advertiſements) ; They, therefore proteſted, That if his Majeſty perſiſted in his Denial, the Dangers were ſuch as would endure no longer Delay, and that if he ſhould not pleaſe to apply his Royal Aſſent to the Ordinance, Neceſſity would inforce them to diſpoſe of the *Militia* by the Authority of both Houſes, in the Manner *propounded*, and that They would do it accordingly.

The

The King, by his Anſwer ſaid, That he ſhould not alter his former Anſwer, but Declared he had *no Thoughts but of Peace.* Clarendon, Vol. I. 441.

The Parliament immediately Voted, *That the Kingdom ſhould be forthwith put into a Poſture of Defence, by the Authority of both Houſes; and that a Declaration ſhould be ſent to the King, containing the* **Cauſes** *of their Fears.* Vol. I. 442.

The Parliament, accordingly, ſent their Declaration to the King, at *Newmarket*, in which are ſpecified, That ſome of the **Cauſes** of their Fears were, *That many Advertiſements were come from Abroad; That his Majeſty had ſtill ſome great Deſign in Hand, for* Breaking the Neck *of this Parliament; That his Majeſty's Abſenting himſelf, and Retiring to ſome Place of Strength; and the Denial of his Preſence and Protection, was ſo done with ſome Intent to* Declare himſelf; *And that they did therefore Apply themſelves to the Uſe of that Power, for the* **Defence** *of the Kingdom, which, by the Fundamental Laws and Conſtitution, Reſided in them.* Vol. I. 443. 9 Mar. 1641. Vol. I. 445, 446.

The Hiſtory of the Militia Bill, being thus related, the Matters that come next in Courſe to be Stated, are the Queſtions in Law, that were Controverted between the King, and his Parliament, *viz. Who was to be the* Judge, *and had the Power of Declaring what was the Law, whether the Parliament, or the King?*

And here it is to be obſerved, That the Lords and Commons, Aſſembled in Parliament, turned upon the King, his own Arguments, for *Aſſerting* their Power over the Militia, without his Majeſty's *Aſſent*, as the King had made Uſe of, for *Impoſing* Taxes, and Levying the Ship-Money, *&c.* by his Royal Prerogatives, without their *Aſſent* in Parliament, as will appear from the Sequel.

The 16th of *March*, 1641, the Parliament Voted, That the Nation was in Evident and Imminent Danger, from Enemies Abroad, and from the Popiſh Party at Home; and that they (the Parliament) were the proper *Judges of the Danger, and of the Means to prevent it*; and that in Caſe of extreme Danger, and of the King's Refuſal to give to the Militia Bill, the Vol. I. 459.

the Royal Aſſent, Inevitable **Neceſſity** did Warrant them to put the Nation into a Poſture of *Defence*; and that their Ordinances, touching the Militia, with which the King refuſed to Comply, ought to be Obeyed by the Fundamental Laws of the Kingdom; and that in regard, the Lords and Commons, in Parliament Aſſembled, being the *ſupreme Court of Judicature*, have declared what the Law of the Land is, it would be a high Breach of the Privilege of Parliament, if ſuch their Declaration ſhould be, Either Queſtioned, Controverted, or Contradicted, and much more, if it ſhould be commanded not to be Obeyed.

Clarendon, Vol. I. 559. The Parliament Argued, That this Law was *Coeval, or as Old as the Kingdom*: That the Kingdom muſt not be without a **Means** to Preſerve itſelf, which, that it might be done without Confuſion, this Nation had *Intruſted* certain Hands with Power to provide, in an Orderly or Regular Way, for the Good and Safety of the Whole, which Power, by the Conſtitution of the Kingdom, was in his Majeſty, and in his Parliament together; yet, ſince the Prince, being but one Perſon, is more ſubject to Accidents of Nature, and Chance, whereby the Common-wealth may be Deprived of the Fruit of that *Truſt*, which was, in Part, Repoſed in him, in Caſes of ſuch Neceſſity, that the Kingdom may not be Inforced preſently to return to its firſt Principles, and every Man left to do what is Right in his own Eyes, without either Guide, or Rule; the Wiſdom of this State hath *Intruſted* the Two Houſes of Parliament, with a Power to **Supply** what ſhould be wanting, on the Part of the Prince, as was Evident by the conſtant Cuſtom and Practice thereof, in Caſes of Nonage, Natural Diſability, and Captivity; and that the like Reaſon did, and muſt, hold, for the Exerciſe of the ſame Power, in ſuch Caſes, where the *Royal Truſt* cannot be, or is not, Executed, and the Kingdom runs an Evident and Imminent *Danger* thereby; which *Danger* having been Declared by the Lords and Commons in Parliament, *There needed not the Authority of any Perſon, or Court, to Affirm; nor was it in the Power of any Perſon, or Court, to Revoke that Judgment.*

Ibid. 558. The Parliament Argued, That if theſe Matters were according to *Law*, they hoped his Majeſty would allow the Subjects to be Bound by them, becauſe he had ſaid, *He would make the Law, the Rule of his Power*: And if the Queſtion were, *Whether*

ther that were Law, which the Lords and Commons had once Declared to be so; who should be *Judges*? Not his Majesty; *for the King Judgeth not Matters of Law*, but by his Courts; and his *Courts*, though Sitting by his Authority, expected *not his Assent* in giving Judgment in Matters of Law: Nor were any other Courts to be *Judge*; for they could not *Judge* in that Case, because they were Inferior: No Appeal lying to them from Parliament, the Judgment whereof was, in the Eye of the Law, the **King's Judgment**, in his highest Court, though the King, in his Person, be neither Present, nor Assenting thereto.

The Parliament urged, That they would never allow a few private Persons about the King, nor his Majesty himself, in his own Person, and out of his Court, to be **Judge** of the Law, contrary to the Judgment of the highest Court of Judicature. Clarendon, Vol. I. 582.

The Substance of what the Noble Historian observed upon the King's **Imposing** the Tax of Ship-Money, and the Judgment that was given for the Crown to Recover it, is Instructing, and proper to be here Inserted, *viz.* A Man shall not unprofitably Expend his Contemplation, that considers the Method of **God's Justice**, that the same Principles, and the same Application of those Principles, should be used to the Wresting all Sovereign Power from the Crown, which the Crown first made Use of, for Assuming an Arbitrary and Unlimited Power, to Invade the People's Rights, and to *Wrest* from them, their Properties. A supposed **Necessity** was, in this Case, thought *Ground* good enough to Create and Assume a Power, and a bare Averment and Allegation of that *Necessity*, to beget a Practice to *Impose* what Tax they thought convenient, upon the People, by Royal Mandates, called *Writs of Ship-Money*, **never before known**; and a supposed **Necessity** afterwards, and a bare Averment of that *Necessity*, was as confidently concluded to be a good *Ground* to Exclude the Crown from the Use of any Power over the *Militia*, by an Ordinance *never before heard of*; and the same Maxim of *Salus Populi Suprema Lex*, which had been made Use of, for Extirpating the People's Rights, was, in its Turn, made Use of, for Overturning the Regal Prerogatives. Vol. I. 542.

Arguments for the King, were managed after this Manner:

8 Apr. 1642. Clarendon, Vol. I. 502. It is proper to obſerve, That his Majeſty having Reſolved to go over to *Ireland*, as before is mentioned, he endeavoured to Clear his Way, by ſending to the Houſe of Peers, a Bill touching the Militia (which they were ſo Zealous to obtain) by which he granted the Power for one Year, to the Perſons Nominated in the Parliament's firſt Ordinance, ſubjecting the Execution of their *Truſt*, to the Authority of the King, and the Two Houſes, Jointly, whilſt his Majeſty was in *England*; and in his Abſence, then in the Two Houſes only.

The Parliament Altered this Bill, by Enlarging the Time to Two Years, Changing ſome of the Commiſſioners Names, and Confining their Power to Rebellion, Inſurrection, and Foreign Invaſion, and by ſubjecting their Authority to the King's Pleaſure, ſignified by the Two Houſes of Parliament.

Ibid. 503, 428. The King poſitively refuſed to Paſs this Bill *ſo Altered*; and Argued, That the Alterations had given to Subjects, an Abſolute Power, and that his Majeſty was not only Excluded from any Power, but abſolutely Diveſted of his Regal Power: That Ibid. 469, 470. it tended to take away the Freedom of his Vote: That their aſſumed Power of Declaring what was the Law, touching the Militia, without Contradiction, was to make a new Law, without the Royal Aſſent, which was, in their Turn, to Introduce an **Arbitrary** Way of Government.

Ibid. 490. The King was pleaſed now to Invert the Argument, by Inſiſting on Mr. *Pym*'s Reaſoning, Publiſhed by the Parliament, *viz. The* **Law** *is that which puts a Difference betwixt Good and Evil, betwixt Juſt and Unjuſt; If you take away the* **Law**, *all Things will fall into Confuſion; every Man will become a* Law *unto himſelf, which, in the Depraved Condition of Human Nature, muſt needs produce many Enormities;* **Luſt** *will become a Law, and* **Envy** *will become a Law;* Covetouſneſs *and* Ambition *will become Laws; and what Dictates, what* Deciſions, *ſuch Laws will produce, may eaſily be diſcerned.* So ſaid that Gentleman, and much more, very well, in *Defence of the Law*, and againſt Arbitrary Power.

His

His Majesty remembred more of Mr. *Pym*'s Words, *viz.* *That the* **Law** *is the Safeguard, the Custody of all private Interest; That their Honours, Lives, Liberties, and Estates, were all in the Keeping of the Law, without which, every Man had a like Right to any Thing.* Clarendon, Vol. I. 510.

The King pursued Mr. *Pym*'s Words, where he asserted, *That if the Prerogative of the King, overwhelm the Liberty of the People, it would turn to* **Tyranny**, *and so into Confusion*; *for* Tyranny *was to admit no Rules to Govern by, but their own Wills*; *if* **Liberty** *undermine the Prerogative, it would grow into* Anarchy, *and so into Confusion that Way.* Ibid. 514. Ibid. 616.

The **Parliament** Replied (in Relation to the *Militia* Bill) *That the King was* **bound** *by the Law and his Coronation Oath, to give the Royal Assent to such Bills, as the Parliament shall, in the Name, and for the Good of the Lords and Commons of* England, *devise and propose to him* (*i. e.* such Laws as they shall choose) *and that therefore no Laws could be more proper than* **those** *which are sent for that Purpose, from the whole Kingdom*: They urged, *That the Resolutions of Parliament are the* **Reasons** *of the Kingdom*: They argued also, *That such* Royal Assent, *to Laws so chosen, was as much* **due** *to the Nation as* Protection, *forasmuch as the Nation may many Times be as much exposed to Ruin, for* Want *of a new Law, as by the* Violation *of the old Ones.* Ibid. 581, 582, 583, 592.

They argued, *That if the Parliament be* **Judge** *between the King and the People, in Questions of Right* (as who could deny it?) *Why should it not be also* **Judge** *in Questions about the* Common Good *and Necessities of the Kingdom.* Ibid. 592.

They insisted, *That the Preamble of the Statute of* 25 E. III. *Intitled*, The Statute of Provisors of Benefices, *is a sufficient Proof of the* Affirmative, *The Words whereof are*; Whereupon the said Commons have prayed our said Lord the King, That sith the *Right* of the Crown of *England*, and the *Law* of the Realm, *is such*, that upon the Mischiefs and Damages, which happen to this Realm, *he ought, and is* **bound** *by his Oath, with the Accord of his People in Parliament, to make* Remedy *for Removing thereof*; they therefore pray him to ordain *Remedy*. Ibid. 582.

The

The King, therefore (*continues the Preamble*) ſeeing the ſaid Miſchiefs and Damages, and having Regard to the Statute, made in the Time of his Grandfather, which Statute was never defeated, repealed, or annulled in any Point; and foraſmuch as he is *Bound* by his Oath, to cauſe the ſame to be kept, as the Law of this Realm; and having Regard to the grievous Complaints of his People, and *willing to ordain, remedy, &c.* This Parliament therefore claimed of this King (*Charles* I.) the like **Rights** as their Anceſtors had done of his Predeceſſors.

Clarendon, Vol. I. 619, 620, 517. The **King** replied, *That the Parliament was but Temporary and Diſſolvable at his Pleaſure; That they were called together by his Writs of Summons, without which they could not Aſſemble; That their Commiſſion and* Truſt *appeared by the* Ibid. 614. *Words of the Writ, to be Counſellors or Adviſers of the King, not Commanders or Dictators.*

Ibid. 609. His Majeſty admitted the Parliament had Power, in particular doubtful Caſes, to declare what the Law is; but to make *general Declarations* in Matters of State, they had not Power.

Ibid. 625, 623. As to the Royal Aſſent to Laws, he inſiſted, *That he was not* Bound *to renounce his own Judgment, and his own Underſtanding, in paſſing Laws, that might ſeparate what was Eſſential to, and inſeparable from the Crown,* viz. Power to protect his Subjects.

SECT. XC.

Ibid. 389, 506, 507. X. **Debates** *about the Property in and over the National Forts, Garriſons, and Magazines of Arms; and whether the King was intitled thereto, otherwiſe than as a* Truſtee *for the Kingdom.*

2 Apr. 1642. The next Occurrence which happened, was the King's going to *Hull*, with a Deſign to ſurprize and take Poſſeſſion of that Town, and of the Magazine in it, and Sir *John Hotham*'s ſhutting the Gates againſt the King, and refuſing, upon his Majeſty's poſitive verbal Commands, to open them: Upon which aroſe theſe Queſtions:

Whether

Whether the Town, Fort, and Magazine, were the King's in Propriety, to diſpoſe thereof at his Pleaſure, or were veſted in him *in Truſt*, or as a Truſtee for the Kingdom? and whether Sir *John Hotham*'s Actions, being authorized by the two Houſes, amounted to High Treaſon or not?

The King, about the Time of the Queen's Departure for *Holland*, and in Concert with her and her private Counſellors, ſent the Earl of *Newcaſtle* to *Hull*, with a *Private Commiſſion*, to be Governor thereof, and to continue there *incognito*, until it ſhould be fit to publiſh that Command, and, in the mean time, by his own Intereſt, to draw in ſuch of the Country as would make a neceſſary Guard to the great Magazine there, to the Intent his Majeſty might have one Harbour to reſort to in his Kingdom: The Earl, who was looked upon to be one of the moſt Valuable Men in the Kingdom, in his Fortune, in his Dependants, and in his Qualifications, entred the Town in *Diſguiſe*, and in another *Name*; but within three Days, the Peers, having private Notice of that *Intrigue*, ſent for him to attend the Service of that Houſe. Clarendon, Vol. I. 388, 587, 681. Ibid. 125.

The Noble Hiſtorian mentions ſome Facts of ſecret Hiſtory (to wit) That this Enterprize was (in very Truth) *the ſole Motive* of the King's Journey into thoſe Parts; becauſe the great Magazine of Arms and Ammunition, which was left upon Disbanding the Army in *Auguſt*, 1641. remained ſtill at *Hull*, and was a nobler Proportion than remained in the Tower of *London*, or all other his Majeſty's Stores; and that his Majeſty had privately reſolved to make a Journey thither with his own uſual Train, and, *being there*, that he would ſtay there, 'till he had *ſecured* the Place to him; and that this *ſecret Purpoſe*, was concealed to that Degree, that very few about him knew any Thing of it. Ibid. 506, 515.

But the Parliament Judged, That this Enterprize was Part of his Majeſty's Meaning, in retiring Northwards; and, therefore, the *Inviting* and Active Members, Dreaded the King's Succeſs in it; and another ſecret Fact was, That the Reaſon why Sir *John Hotham* ſhut againſt the King the Gates of *Hull*, was, an Information he had received, *That if he ſuffered his Majeſty's Entrance, the King would immediately* hang him: Which Inſi- Ibid. 513, 708.

nuation ſo enraged the King, that his Majeſty could not refrain from Calling that Informer (whoever he was) a **Villain.**

Clarendon, Vol. I. 488, 489, 511, 579. The King Declared, *That the Parliament's placing a Garriſon in* Hull, *was againſt Law*; *and that the Removal of the Magazine in that Town, was the Removal of his own proper Goods*; *and that he would eſteem any Attempt for that Purpoſe, an Act of Violence*; *That he had the ſame Title to, and Propriety in the Town, and Fort of* Hull, *as any of his Subjects had to their Houſes or Lands, and the ſame Title to, and* Propriety *in, the Magazine there, as any Man had to his Money, Plate, or Jewels*; *and therefore* Hotham's *Actions, which the Parliament avowed, had violated the* Laws of Property, *and affected, or invaded every Man's* Property *equally with the Royal* Property.

Ibid. 579. The Parliament Argued, That the Principles laid down, touching his Majeſty's *Property* in the Town and Magazine of *Hull*, would pull up all *Foundations*; for that the King's Towns were no more *his own*, than his Kingdom was *his own*; in regard, that if he had ſuch *Property* as he claimed, he might ſell, or give, or diſpoſe of his Kingdom, and of his Subjects Perſons, and of their Lands, as abſolutely as any particular Man might do with his Lands or Goods; which was a monſtrous Maxim, and contrary to the expreſs Act of Parliament of 40 *E.* III. and yet, as monſtrous as it was, the infuſing it into our *Princes Minds*, had been the *Root* of all the Subjects Calamities.

Ibid. The Parliament Argued, That our Kings were only **Intruſted** with their Kingdoms and People, and with the Towns, Forts, and Magazines, and with the publick Treaſure, and with whatſoever was bought with it, for the Good, and Safety, and Advantage of the *People* and Nation; and that this *Truſt* ought to be managed and executed by the Advice of Parliament, whom the Nation had, for that Purpoſe ſent and *Intruſted*.

Ibid. The Parliament Argued, That the Nature of a *Truſt* was, That *Some-body* muſt Create the *Truſt*, and that thoſe who Created, might Declare the Terms of the *Truſt*; and that there might be, not only Breaches of that *Truſt*, but ſuch Breaches, as might be Inconſiſtent with, and Deſtructive of, the very Eſſence

Eſſence of the *Thing Truſted*, viz. *The Safety and Liberties of the Nation*, and conſeqnently would be a Renunciation of the *Truſt* itſelf; and that therefore *Neceſſity*, and Natural Reaſon, required, that a **Power** ſhould Reſide *ſome-where*, to Determine and Reform thoſe Breaches of *Truſt*, or elſe the Thing *Truſted*, viz. *The Safety and Freedom of the Nation*, might be *utterly Deſtroyed*.

The Parliament Epitomiz'd their Arguments, by deſiring to Inform the King, That his Intereſt in Towns, Arms, or the Kingdom itſelf, was not of that Kind, which Private Men have Intereſt in their Goods, to *Sell* or *Diſpoſe* of at Pleaſure, becauſe in that Caſe, they might, with Eaſe, be Transferred into Enemies Hands; but were only *Intruſted* to his Majeſty for the Good of all. In Performance of which *Truſt*, none but the Parliament are, or ought to be, his Counſellors or Directors: That there could be no Good or Uſeful *Diſputation*, where the Principles are not granted; That it was ever heretofore taken for a certain *Principle*, That the Parliament Sitting, is the only *Judge* of what is dangerous to the Common-wealth, and what uſeful; as likewiſe, what is lawful in thoſe Caſes, which the King, by Advice of no Private Council whatſoever, ought to *Controul* or Contradict: *Which Principle*, 'till the King would be pleaſed rightly to Apprehend, Diſputations and Declarations, would be Endleſs, and no true Underſtanding between him, and his People, could ever be Begotten.

His Majeſty Replied, That he had often heard, That the *Laws* of Man had Committed a great *Truſt* to the King, and admitted, That ſuch *Truſt* was Committed to him, and his Heirs; but his Majeſty never underſtood, *what Truſt* was Committed to Either, or Both, Houſes of Parliament, without the King. Clarendon, Vol. I. 517, 619.

Upon which, it might have been properly demanded, What Men thoſe were, whom, his Majeſty admitted, had made the *Laws* which Committed that great *Truſt* to his Majeſty, and his Heirs?

SECT.

SECT. XCI.

XI. **Debates** *about High Treaſon, and whether Sir* John Hotham's *Shutting the Gates of* Hull *againſt the King, and Denying him Entrance* (which was Authorized by the Two Houſes) *was* Treaſon, *or not.*

The Debates before Stated, produced this Grand Queſtion, *Whether Sir* John Hotham, *in doing what he did, had Committed* High Treaſon, *or not, for the King immediately Proclaimed him a* Traytor.

Clarendon, Vol. I. 513, 514, 593. The King Argued, That if the *Senſe* of the Statute of 25 *E.* III. *cap.* 2. were not very different from the *Letter*, Sir *John Hotham's* Act was plain *High Treaſon.*

Vol. I. 515, 516. Vol. I. 455. The Parliament Argued, That they had manifold Evidence, that the Counſels of ſome, in near Truſt and Authority about the King, *Endeavoured* to put the Nation into a Combuſtion, by Drawing his Majeſty into Remote Places of Strength, and by Exciting the People to ſerve the King, againſt the Parliament; and that there was an Army in *Denmark*, ready to be Tranſported to *Hull*; and that there were likewiſe Forces ready in *France*, to be Landed there: The Parliament, therefore (*Leſt* that Party, by the Advantage of the Town, and Magazine of *Hull*, ſhould be Enabled to Effect their bad Intentions) had, in Diſcharge of their *Truſt*, and by that *Power* which Reſided in them, Commanded that Town to be ſecured by a Garriſon of the Trained Bands, under Sir *John Hotham.*

Vol. I. 509. They therefore Declared, *That what Sir* John Hotham *had done, was done in Obedience to, and by their* Commands; *and that he was* Clear *from the Crime of High Treaſon; and that the Declaring of him a Traytor, being a Member of the Houſe of Commons, was a high Breach of Privilege; and that ſuch Proclaiming him Traytor* (*being done without due Proceſs, or any Proceſs of Law, in a Time of Peace*) *was againſt the Liberty of the Subject, and againſt the Laws of the Land; and Intreated the King to make a ſpeedy* **Return** *to, and Join his Parliament; and that ſuch his* Return, *would put* Hull *into his Majeſty's own Poſſeſſion.*

As

†

As to the Law, in Relation to High Treaſon, the Parliament Argued, That if the *Letter* of the Statute of Treaſons, did demonſtrate the *Senſe* of the Makers, then the Statute had Declared and Inſtituted Two diſtinct Species of Treaſon : Clarendon, Vol. I. 226, 589, 590, 592, 594

I. *That it is Treaſon to Compaſs, or Imagine, the Death of the King, which ſecured his Perſon in his natural Capacity, as a Man.*

II. *That it is Treaſon to Levy War againſt the King.*

This Species (as they Argued) Reſpected the King's *Political Capacity*, as he was Inveſted with the Government, not as he was a Man, *but as he was a Man that was a King*, Intruſted with the Government.

They urged, That if the latter Clauſe of Levying *War*, had meant only againſt the King's Perſon, then that latter Clauſe was uſeleſs, becauſe the former Branch of Compaſſing the King's Death, had neceſſarily Implied this, of Levying War: They therefore Inferred, That the Levying *War* againſt the Regal Authority, and the Laws of the Kingdom, was, That Levying of *War* againſt the King, which the Statute intended, and that the Statute did not intend any Levying of *War* againſt the King's Perſon.

The Parliament urged, That, at this Time, there were many *Plots* and *Deſigns* of Force, againſt the Parliament and Kingdom : That there were Invaſions, by great Forces from Abroad, intended to begin at *Hull*, which were to Seize the great Magazine there : And, therefore, in Regard to the great Diſtance, and Alienation of his Majeſty's Affections from his Parliament (and in them, from his Kingdom, which they Repreſented) They, in this Time of Danger, of which They, only, were the *proper Judges*, had Commanded Sir *John Hotham* to ſecure the Town and Magazine of *Hull*, for the Service of his Majeſty, and the Kingdom, and Juſtified him for Obeying, and Executing, their Orders.

SECT. XCII.

XII. **Debates** *about the Intentions of Either Party, to make* War *on the other; and whether the* **War** *to be made by, or on the Part of the King, againſt the Parliament; or by the Parliament, againſt the King, were* Offenſive, *or* Defenſive.

As to the Intentions of either Party, to make *War* on the other, this was the Niceſt Part to be managed in the whole Controverſy.

D'Orleans, P. 55. *D'Orleans* writes poſitively, *That* War *was Reſolved on, in the King's Cabinet Council at* Windſor; *and that the Queen, on her Part, ſhould Negotiate in* Holland *for Foreign Forces; and the King, on his Part, ſhould Retire to* York, *make Levies, Seize the Magazine at* Hull, *and Temporize with the Parliament, until theſe firſt Attempts ſhould be Ripened and Accompliſhed*; as before is mentioned. If this Reſolution be admitted to be true, then it is obvious, That the *Cauſe* of the War, was the **Invitation** of the *Scots* Invaſion, and the End of it, the Puniſhment of the *Inviters*, and the Reſcinding of the Acts of Reformation, Paſſed in this Parliament.

Clarendon, Vol. I. 445, 455. Sanderſ. 694. The Negotiations of the Pope's *Nuncio*, with the Kings of *France* and *Spain*, to furniſh 4000 Men each, to Aſſiſt the King, put the Parliament into terrible Apprehenſions: To which was added, The King's Treaty with *Denmark*, for Foreign Forces, becauſe that was Unqueſtionable; for his Majeſty demanded of that King, 6000 Muskets, 1500 Horſe-Arms, 20 Pieces of Artillery, and as many Horſemen, as would agree with the *Daniſh* Affairs, directing them to be Landed at *Newcaſtle*, or the *Holy Iſland*, deſcribing the laſt Place to be the apteſt Harbour in *England*, having an excellent Road, in, and out, and a Strong Fort under the King's Command.

Clarendon, Vol. I. 554. But the King's Liſting, into a Troop of Horſe, ſome Gentlemen at *York*, of the Trained Bands (being 600 Horſemen) which were called his Guards, cauſed a Rumour, of his Raiſing Forces to make War upon the Parliament; for ſuch a Body of Men might, by an Expeditious March, eaſily have Entered the Houſe of Commons, and Diſperſed the Unarmed Parliament: The

The Parliament therefore looked on that Proceeding, as a Clear Evidence of his Majeſty's Intentions to make *War* upon them.

The two Houſes thereupon voted, That the King intended to make **War** againſt the Parliament; and that whenſoever the King ſhould make ſuch *War*, It would be a Breach of the *Truſt* repoſed in him, by his People, contrary to his Oath, and tending to the Diſſolution of his Government; and that whoſoever ſhould *Serve* or *Aſſiſt* him in ſuch his Wars, ſhould be Accounted *Traytors*, by the Fundamental Laws of the Land, and that the ſame had been ſo adjudged by two Acts of Parliament 11 *R.* II. and 1 *H.* IV. and that they ought to ſuffer as Traytors. Clarendon, Vol. I. 534.

But the Parliament, nevertheleſs, petitioned his Majeſty to *Disband* thoſe new-rais'd Forces, and to deſiſt from any further Deſigns of that Nature, otherwiſe they ſhould hold themſelves bound, in regard to the *Truſt* repoſed in them, by the People, and by the Fundamental Conſtitution, to imploy their Care to **Defend** the Parliament, and preſerve the publick Peace. Vol. I. 535.

The Parliament ſent to the King at *Beverley*, a Petition Repreſenting, That although his Majeſty continued to raiſe *Forces* againſt them, and to make great Preparations for **War**, both in *England*, and from beyond the Seas, and intended by *Arms* to over-rule the Judgment and Advice of his great Council, and by Force to determine the Queſtions concerning the Government, and Liberty of the Kingdom then *Depending*, yet to prevent a Civil *War*, they beſeeched his Majeſty, to forbear all Preparations of *War*, and to **Return** to his Parliament, promiſing to prevent all Tumults, with which he had been Diſpleaſed. Vol. I. 634. 15 July 1642.

The Parliament Argued, That it was an Evidence of their Moderation; that the Precedents which their Anceſtors had acted, and put in Practice (meaning, to preſcribe to his Majeſty a Time of 40 Days to *Return* to his Parliament, or elſe to make a Diſpoſition of the Government, as had been ſignified by the Parliament, to King *Richard* II.) never Entred into their Thoughts. Vol. I. 578.

The

Clarendon, Vol. I. 441. The King, on his Part, in his Anſwer to the Parliament's Petition Delivered at *Theobald's*, Declared, *upon his Honour*, That he had no Thought but of *Peace*.

Ibid. 512. The King, in his Anſwer to the Parliament's Declarations and Votes, concerning *Hull*, was pleaſed to Declare, *That it was not in the Power of any Perſons to incline him to take up* Arms *againſt his Parliament, or to embroil the Kingdom in* Civil Wars; *That his Heart did* Bleed, *at the Apprehenſions of a* Civil War; *and that if, in Oppoſition to his good Deſigns, a* Civil War *ſhould ariſe, God, and his own Conſcience told him*, That of the Blood and Deſtruction, that muſt follow, he was clear.

Ibid. 554, 555, 556, 557, 558. The King took much Pains at *York*, in *June* 1642. to publiſh, That he would not engage any of the Lords, or others, in any *War* againſt the Parliament, Except it were for his neceſſary *Defence* and Safety againſt ſuch, as did invade or attempt againſt his Majeſty.

Ibid. 682. The King ſent from *Beverley* to the Parliament a Meſſage, ſignifying, *That before he would uſe* Force *to reduce* Hull, *he did once more require them to Deliver it up by a Day prefixed*, Elſe God and good Men muſt Jndge between them: And yet

Ibid. 715. Husband's Coll. 514. the King publiſhed his longeſt Declaration, concerning the Proceedings of this Parliament, Dated the 12th of *Auguſt* 1642. which my Lord *Clarendon* writes, had been long Ready, and was, in Effect, a Declaration of *War*; in which his Majeſty recapitulated all the Steps made by the Inviters of the *Scots* Invaſion, and by the Parliament in their Favour, and on their Behalf; his Majeſty Reſumed and Declared therein, his Intentions and Reſolutions, to *proſecute* the five Impeached Members for the *Invitation*, Demanding, not only thoſe five Members, but Mr. *Martin*, *Ludlow*, *Pennington* (Alderman) and *Venne*, to be Delivered into the Hands of Juſtice; and threatened to Indict, for High Treaſon, the Earls of *Warwick*, *Eſſex*, and *Stamford*, the Lord *Brook*, and *Hotham*, and *Skippon*; and in the Concluſion, his Majeſty Declared, *That* Nothing *but the Safety of his Perſon, and the Liberty of the Subject, and the Freedom, Privilege and Dignity of Parliament, could make his Majeſty take up* Defenſive Arms. *His Majeſty therefore, once more offered a free Pardon to all* (except the

the impeached Members, and ſome others of the moſt active Lords and Commoners therein named) *and that he ſhould be glad to lay down thoſe* **Arms**, *but if his Subjects ſhould Engage in a* War, *to juſtify thoſe Proceedings, and thoſe Perſons, his Majeſty would look upon it as a* **Rebellion**, *and, as ſuch, would proceed to ſuppreſs it.*

It is Remarkable, That this Declaration was the *longeſt* his Majeſty ever Emitted; and the more ſo, for its Deſcending to minute Particulars.

The Declaration commences with the Calling of this Parliament, Repreſenting, That his Majeſty's Reſolution to ſummon it, **Was Free and Uncompelled** by any Violence; That it proceeded from his Majeſty's Conſideration of the unhappy State of the Kingdom; Husband's Coll. 515.

That his Majeſty had conſented to the Abolition of the *Star-Chamber*, in regard that Court had *Invaded the Laws of the Land, and the Liberty of the Subject, by Exerciſing an Arbitrary Power*;

That his Majeſty had Conſented to the Repeal of the *High Commiſſion Court*; becauſe that Court had ſo over-grown the Power of the Law, that it would not be limited or guided by it; *but cenſured, fined, and impriſoned his People for Matters not puniſhable by the Law*;

That his Majeſty had been contented, that the Writs for *Ship-Money* ſhould be adjudged void, merely becauſe the two Houſes of Parliament, *had Declared the Grounds and Reaſons* of the Judgment for it, *to be againſt the Laws of the Land*, and againſt the Property and Liberty of the Subject.

The Declaration enumerates the other Particulars of *Reformation*, touching the Foreſts, the Clerk of the Market, and the Matter of Knighthood, the Continuance of this Parliament, the Tonnage and Poundage; but this laſt is Declared to be a *Right of Impoſing* Taxes, **Parted** *with, merely to comply with an Asking Parliament.*

The Parliament plainly enough ſaw, That the Seeds, which produced this Declaration, were, That Acrimony which boiled

in the Royal Mind againſt the grand **Invitation** of the *Scots* Invaſion, and that the End of this long Declaration of *War* was, to proſecute the *Inviters* with Vengeance; and that if his Majeſty became *Victorious* in War, the Foundations of this Government would be unravelled; for Arguments againſt *Victory* are dead Letters, and ſuch as no one would dare to inſiſt on.

The *Grievances* and *Sufferings* of the Subject, and the Manner and Means of Removing them, being thus admitted and *Confeſſed* by the King, had an Effect quite contrary to what the Declaration expected; for it made the *Inviters* Deſperate; and as to the *People*, it rather kindled in them a Fear of loſing thoſe good Laws, which they had acquired, and a Reſolution rather to **Defend** and juſtify the *Inviters* (whoſe Proceedings had *obtained* them) than an *Inclination* to abandon them: However, it is remarkable, That his Majeſty omitted to mention in this Declaration the *Illegal* Proceedings of the *Council-Table*, where he himſelf preſided; and the Noble Hiſtorian was pleaſed to omit, out of his Hiſtory, all theſe his Majeſty's Admiſſions, or rather *Confeſſions*.

The Parliament, however, were ſtill backward and cautious in giving any open or publick *Blow* or *Aſſault*, that ſhould look like **Offenſive War**; otherwiſe they might eaſily (as the Noble Hiſtorian informs us) have taken the King out of his Bed at *Nottingham*, where his **Standard** had procured no competent Army to be gathered, inſomuch that the King's beſt Counſellors, at that Time, adviſed the ſending a Meſſage of Peace to protract the Time; otherwiſe, if the Parliament's Forces ſhould take the King Priſoner, it would give the Parliament Power and Reputation to proceed againſt his Majeſty; and, it might be, *againſt his Poſterity*.

Clarendon, Vol. II. 7.

SECT. XCIII.

XIII. **Debates** *Containing Invectives and Menaces on either Side, which were made in the* Paper-War *between* October 1641. *and the* 22*d of* Auguſt 1642. *by which each Side endeavoured to blemiſh and Intimidate the other.*

The

The King's Invectives *and* Menaces.

The King, in his Anſwer to the Grand Remonſtrance, repre- Clarendon, Vol. I. 324, 518.
hends the Parliament for Printing it, and ſaid, *He would reſerve to himſelf to take ſuch Courſe for that Proceeding, as he ſhould think fit.*

The King, in his Meſſage from *York*, in the Cloſe of the Year 1641. where he found a very good Reception, was pleaſed to ſay, (as is before mentioned) that he would, for the future, have nothing *Extorted* from him, nor, as Lord *Clarendon* writes, be any more *Swaggered.* Vol. I. 459.

The King was ſo Angry with the Parliament's Declaration of *May* 26. 1642, that he Calls it a *Newer* Declaration, of a *Newer* Nature, which ſhould have a *Newer Anſwer*; and he doubted not, but his Subjects would plainly Diſcern, without Reſigning their Reaſon and Underſtanding, to his Prerogative, or to the Infallibility of the then Major Part of both Houſes of Parliament (Infected by a few Malignant Spirits) *where the Fault was.* Vol. I. 596.

In his Anſwer to the Parliament's Declaration of *May* 19. 1642, his Majeſty ſaid, *That his Complaints had never been of his Two Houſes of Parliament, but of ſome few Schiſmatical, Factious, and Ambitious Spirits*, who ſaid, *They did not know of any Tumults at* Whitehall; and therefore his Majeſty was pleaſed to Exclaim, *What a Strange Time are we in? that a few Impudent, Malicious* (to give them no worſe Term) *Men, ſhould Caſt ſuch a Miſt before the Eyes of both Houſes, as that*, &c. and added, *That by the Help of God, and the Law, he would have Juſtice for thoſe Tumults*; And, a little after, he calls the Active Members, who, indeed, Invigorated the Parliament, a few Factious, Seditious, and Unworthy Perſons, who had Uſurped the Word *Parliament.* Vol. I. 607.

And in his Reply about the Buſineſs of *Hull*, his Majeſty ſaid, *He would*, in due Seaſon, Call *ſuch as obeyed the Parliament's Ordinance about the Militia, to a* Legal Account *for the ſame.*

And

Clarendon, Vol. I. 523. And in one of his Declarations, his Majeſty profeſſed, *He had no Jealouſy of his* Parliament, *but of ſome Turbulent and Ambitious* Natures *therein.*

Ibid. 670. The King threatned to proceed againſt thoſe, who preſumed to Act under the Ordinance about the Militia, as Raiſers of Sedition, and as Enemies to his *Sovereign Power*; and alſo, in
Ibid. 669. the ſame Reply, the King ſaid, *That the Keeping his Majeſty out of* Hull, *was* **High Treaſon**, *and the taking away the Magazine, and Munition, was an* Act of Violence, *by what*
Ibid. *Hands, or by whoſe Direction, ſoever it was done; and that in both Caſes, by the Help of God, and of the Law, he would have Juſtice, or loſe his Life in the Requiring it.*

Vol. II. 81. The King, as to the Affront Specified in the Parliament's Petition, *That he would Return to his Parliament with his Royal, not Martial, Attendance*, ſaid, *He did not Impute the ſame to* Both his Houſes of Parliament, *nor to the Major Part there preſent, but to that Dangerous Party, his Majeſty muſt ſtill* Cry out upon (meaning the Inviters); But his Majeſty's Invectives, and Menaces, are no-where ſo Strong and Pregnant, as in his Declaration, after the Taking of *Briſtol*, 1643, herein after mentioned. To all which Imputations may be added,
Husband's Coll. 521. his Majeſty's Corroding Invective, *That the Parliament had a* **Deſign** *to Engage this Kingdom into ſo vaſt a Debt, that there might be no Way of Paying it, but by ſome of the Lands of the Church.*

SECT. XCIV.

Clarendon, Vol. I. 585. 586. THE **Parliament**, by their Invectives and Menaces, Characterized the Malignant Party about the King (meaning the Queen, the *Nuncio*, and the *Romiſh* Prieſts) deſcribing them by their Fruits, Declaring, *That if thoſe* Spirits *ſhould ever Force them to* Defend *their Privileges, Rights, and Liberties, with their* **Swords**, *the Blood and Deſtruction that ſhould Enſue, muſt be wholly Caſt upon their Account; for God, and their own Conſciences, told them, They were Clear*; and added, *That they would Perſiſt in that* **Defence**, *although they ſhould* Periſh in the Work.

The

The Parliament Declared, *That the* Arms *which they had been forced to take up, for the Preſervation of themſelves, and of the Liberties of* England, *ſhould never be laid down, until the King ſhould* Leave Delinquents (meaning the Popiſh Counſellors) *to the Juſtice of Parliament*, &c. Clarendon, Vol. I. 595. Vol. II. 14.

But the greateſt Invective, or Blemiſh, which the Parliament Endeavoured to fix on the King, was in Point of his *Sincerity*; to wit, That his Majeſty had a **Diſinclination** to the Laws of the Land, and eſpecially, that he had Conſented to all the Excellent Laws Paſſed in this Parliament, **with great Reluctancy**, and meant to Avoid them, or, at leaſt, to **Depart** from them, and to Exerciſe that Arbitrary Power, which thoſe Laws had Aboliſhed, and Declared Illegal: The *Diſadvantage* therefore, which his Majeſty ſuffered by that Imputation, was Incredible; for no Rational Man who believed it, would Aſſiſt him to Effect it; and, therefore, ſince this Clamour affected his Majeſty in the **tenderest Part**, the King took more Pains to beat down this *Aſperſion*, than any other; and yet, at the ſame Time, Retained his Animoſity againſt the Grand *Invitation*, and the *Inviters*; which may be plainly enough Collected, from what my Lord *Clarendon* hath Tranſmitted; for he Informs us, *That he had Cauſe to believe, that* Arguments *were made Uſe of, by ſome in Power about the King, to* Induce *his Majeſty to Paſs the Bill, for* Taking away the Biſhops Votes in Parliament, *and other Acts of* no leſs Moment, *upon a Pretence, That there was* **Violence and Force** *uſed in obtaining them, and that they were, for that Reaſon, in themſelves* Invalid; *and that in quieter Times, thoſe Acts of Parliament might, on thoſe Foundations, be Revoked and Diſannulled.* If, therefore, the Noble Hiſtorian had Cauſe to *Believe* theſe ſecret Negotiations, who, at this Day, can have Cauſe to *Disbelieve* them? Vol. I. 465. Ibid. 430.

SECT. XCV.

XIV. **Debates** *about Religion, ſo far as concerned the King's Children.*

It is plain, the Active Members, with great *Sagacity*, foreſaw the Danger which would neceſſarily Accrew to the Proteſtant

ſtant Religion, from ſuch of the Royal Family, as ſhould be perverted to Popery. The Parliament therefore Petitioned the King, at *Theobalds*, *That he would Continue the Prince of* Wales, *in ſome of his Majeſty's Houſes, in, or near*, London, *that the Deſigns of the Enemies of the Proteſtant Religion, might be prevented*; And they made it One of the famous Nineteen Propoſitions, *That no* Marriage *of any of the King's Children, ſhould be Treated of, or Concluded, with any Foreign Prince, or other Perſon*, without *the Conſent of Parliament.*

Clarendon, Vol. I. 440.

Ibid. 637.

Ibid. 441. The King, on his Part, promiſed, *That he would take that Care of the Prince, and his other Children, which ſhould Juſtify him to God*, as a Father, *and to his Dominions*, as a King.

But the Nation was (notwithſtanding the King's Promiſe) Diſappointed in all the King's Children; for every one of them (except *Mary* Princeſs of *Orange*) were, by the Queen-Mother, perverted to the *Romiſh* Religion, and married to Papiſts, whereby the Proteſtant Religion was very much weakened, and had been, by this King's Son, King *James* II. Extirpated, if that *only Branch* of the Royal Family, which Sprung from that one of the King's Children, who married a Proteſtant (*William* Prince of *Orange*) had not been Qualified to be *Captain* of the Proteſtants, and Enabled, by the Divine Providence, to Reſcue this Nation from under Arbitrary Power, and a Popiſh Government.

Upon this Head, theſe Obſervations occur, *viz.*

I. *That Proteſtancy was ſo deeply Planted, that Popery was become an Abomination.*

II. *That the Queen-Mother, when ſhe Endeavoured to Pervert her Children to the* Romiſh *Religion, Acted a Part of the moſt Unkind Nature.*

1. *Becauſe their Embracing that Religion, would* Incapacitate *them ever to be* Reſtored *to the Crown, or to Enjoy it with any Quietneſs.* And,

2. *Becauſe,*

2. *Becauſe, if their* Romiſh *Religion were Concealed, they muſt neceſſarily Act a moſt* Diſſembling *Part towards God and Man, and Live in Continual Fear of a Diſcovery of that* Diſſimulation.

SECT. XCVI.

XV. **Debates** *Containing Applications to, and Arguments with, Foreign States, for and againſt* Aſſiſtance *to be obtained of them.*

The Arguments which the King and Queen made Uſe of, in *Solliciting* Foreign Potentates for Aſſiſtance, to maintain their Meaſures; and alſo the Counter-*Sollicitations* which the Parliament made with thoſe *Potentates*, to croſs and prevent the coming of that Foreign Aſſiſtance, will illuſtrate all that has been before written.

The King's Arguments, doubtleſs, Repreſented the Parliament as a Combination of rebellious, ſeditious, and unreaſonable Men, whoſe Principles were equally deſtructive to all Governments; and that therefore all Potentates were equally concerned with his Majeſty, in ſuppreſſing and puniſhing ſuch a Sort of turbulent Subjects; and for that Reaſon, the King was, in ſome Sort, intitled to Demand, and have their Aſſiſtance.

The **Parliament**, on the other Side, Repreſented to thoſe Potentates, and particularly to the States of *Holland*; That they contended for nothing, but to have and enjoy the Benefit of the Antient and Fundamental Laws of the Kingdom, which had been all violated, by his Majeſty's Aſſuming a Power to govern contrary to them, by his Arbitrary Will and Pleaſure, and by his endeavouring to make himſelf an Abſolute Lord, and his Subjects ſlaviſh Vaſſals.

That they Acted purely on the Defenſive Part, and had continually invited the King to **Return** to his Parliament, Offering to be Obedient, according to the Law of the Land; but that his Majeſty obſtinately ſtood out againſt all Accommodations.

The

Clarendon, Vol. II. 90. The Noble Hiſtorian informs us, That ſome of the Parliament's Arguments with the States of *Holland*, were urged after this Manner:

Ibid. 90. They Reminded the States of the great Help they had received from this Nation when they lay under Oppreſſion; and therefore, the Parliament could not think the States would be forward in helping to make them Slaves, who had aſſiſted to make them Freemen, or would forget that the Troubles and Dangers of the *Dutch*, had Iſſued from the ſame Fountain, *viz.* *Arbitrary Power.*

That the Queſtion was not, *Whether the King ſhould enjoy his Legal Power and Prerogatives?* but, *Whether his Prerogatives and Power ſhould be employed to their Defence or to their Ruin?* That it was Evident it would be more for the King's Honour and Greatneſs, to join and concur with the Parliament, than in the Courſe he was then in. And as an undeniable Evidence of the Truth of theſe Arguments,

The Parliament produced and ſhewed to the Foreign Potentates, the Preambles of the ſeveral Acts paſſed in this Parliament, to which the King had given the Royal Aſſent; by which it did appear, That the ſeveral Inſtances of his Miſgovernment did thereby ſtand not only acknowledged, but by himſelf condemned.

Theſe Arguments, and this Evidence, ſo far prevailed on the Foreign Potentates, and eſpecially with the Court of *Denmark*, that his Majeſty was forced to ſend a Memorial to that King, whereby he Apologized for making the **Conceſſions** the Parliament had inſiſted on; as may be ſeen in *Sanderſon*, p. 692, 693.

In ſhort, all the Foreign Potentates either denied or failed to ſend the King any Aſſiſtance, objecting, That his Majeſty *needed none*; for he had in his own Hands *Means* to relieve himſelf, *viz.* To *Return* to his Parliament, and Conform his Government to the Laws of his Kingdom.

SECT.

SECT. XCVII.

To all that hath been Written, it may be added, That the Parliament at firſt, *Behaved* Modeſtly, Endeavouring to furniſh the King with Materials to Load all the Blame of Male-Adminiſtrations, upon his Miniſters, and to ſubmit to his Majeſty as a King Miſ-adviſed, provided his Majeſty would diſcover and leave the Evil Counſellors to the Juſtice of Parliament; and that for this End, they continually petitioned his Majeſty, to obtain from him that Diſcovery; and, particularly, they often repreſented to his Majeſty, the Maxim of Law which ſays, *The King can do no Wrong*; and that, therefore, at the ſame Time, when his Majeſty, as a King, ought to be exempted from Blame, and from being charged with Wrong, his Miniſters and Adviſers ought to be Queſtioned and Cenſured; and that the Miniſters *Crimes* were greatly aggravated, when they endeavoured to fix their Diſhonour upon the King, by making his Majeſty the Author of thoſe *Evil* Actions, which were the *Effects* of their own *Evil* Counſels: But it is hard to be Accounted for, why the King, in Anſwer to theſe kind Repreſentations, was pleaſed to write a Letter to Lord *Clarendon* (*Clarendon* Vol. I. 433.) directing him to lay the ſame before the Parliament, whereby his Majeſty was pleaſed to ſay, *That the Articles of Impeachment, which had been prefered againſt the five Members, were by himſelf Delivered to his Attorney-General engroſſed in Paper; and that he had then commanded him to Accuſe thoſe Perſons, upon thoſe Articles of High-Treaſon, and other Miſdemeanors; and, that his ſaid Attorney did not adviſe and contrive the ſaid Articles, nor had any Thing to do with, or in adviſing any Breach of Privilege that followed after; and for what he did in Obedience to his Commands, he conceived he was bound by Oath, and the Duty of his Place, and by the Truſt repoſed in him, by his Majeſty, ſo to do; and that if he had refuſed to obey his Majeſty therein, his Majeſty would have Queſtioned him for Breach of Oath, Duty, and Truſt; but having Declared that he found Cauſe* wholely to deſiſt *from proceeding againſt the Perſons accuſed, he had commanded him to proceed no further therein, nor to produce, nor diſcover any* Proof *concerning the ſame.*

Clarendon, Vol. I. 375, 549.

Vol. I. 548.

Clarendon, Vol. I. 606. The King was alſo pleaſed, in his Anſwer to the Paliament's Declaration of the 19th of *May* 1642. to aſſert, *That the Parliament had found out a new Device, inſtead of* Anſwering *his Reaſons, or Satisfying his juſt Demands, to* Blaſt *his Declarations and Anſwers, as if they were not his own, calling that Device a bold and ſenſeleſs Imputation.*

So that, after this Aſſuming upon himſelf, all the Facts, which made the Differences, there was no Room left, for Dividing the King's *Politick Capacity*, from the Counſels of his Miniſters.

It is alſo Obſervable, That the King ſpared no Pains to diſtinguiſh between the Actions of the Inviting and Buſy Members, whom he reſolved to *Ruin or be Ruined*, and the Actions of the Parliament, often Declaring, in his Invectives or Menaces, That his Majeſty did not *mean or intend* the Parliament; and, particularly, in his Second Meſſage from *Not-*
Vol. II. 12, 15, 301. *tingham*, the King Aſſerted, *That he never did* Declare *both the Houſes of Parliament* Traytors, *nor did ſet up his Standard as againſt his Parliament*; but his Majeſty was unſucceſsful, in Regard it was as Feazible to divide the Body from the Soul, as to make that Diſtinction; for the Parliament Avowed all their own Actions, as done by the whole Parliament, as poſitively as the King had thoſe of his Miniſters.

It merits an Enquiry, why there is found, in Lord *Clarendon's* Hiſtory, theſe two Relations, Firſt, *That the King always Diſclaimed the Tonnage and Poundage, otherwiſe than by the Donation, or as a Free Gift of the People*; And next, *That*
Ibid. 18. *the Gentry and Inhabitants of* Shropſhire, *looked upon the King's Proteſtations at the Head of his little Army near* Wellington, *that he would* obſerve Inviolably *the Laws which he had Conſented to, in this Parliament, as a more ample Security for their Enjoying the Benefits of thoſe Acts, than the* Royal Aſſent *he had before given thereto*; ſince the Stories of theſe two Facts are unworthy of the Noble Hiſtorian, in regard the former is not true in Fact, and the latter is ſo mean and inſipid, as to be far from coming from the Pen of that exalted Genius, without fixing an Imputation upon *Shropſhire* Men, as if they were a People of much Zeal and little Knowledge.

SECT.

SECT. XCVIII.

THE Arguments on both Sides, being *Cloſed*, It is material to Repreſent, what was the Reſult of thoſe Reaſonings, in Relation to the People's Sentiments, on both Sides.

Thoſe on whom the King's Repreſentations prevailed, were generally his Subjects in the furtheſt Parts of the Nation; in *Wales*, *Cornwall*, *Cumberland*, &c. who were the leaſt Senſible, and had been the leaſt Afflicted, with the late Preſſures and Sufferings, under the King's Exerciſe of Arbitrary Power, after the *Departing* from the known Laws; for the Men of thoſe Parts, firſt Compoſed, and after Recruited, from Time to Time, the King's Armies: Their Notions were Oſtentous and Pompous, to Maintain (as they Apprehended) the Prerogatives, and the Sovereignty, and Powers of their King, or ſupreme Governor. Sanderſ. 544.

Thoſe on whom the Parliament's Repreſentations prevailed, were generally the People of the Midland Counties, and the Traders in the Southern Parts of the Kingdom, who had ſmarted moſt by the Arbitrary Acts of Power, *viz.* By Seizures of their Goods, and Proſecutions for Ship-Money, for Loans, for Tonnage and Poundage, and for Impoſitions on Merchandize, and by Fines and Puniſhments, Inflicted in the *Star-Chamber*, and at the Council Table, and in the Foreſt Courts, and by the Martial Law, and eſpecially by Illegal, and Irremedial, Impriſonments, *&c.* Theſe People being the Richeſt, as well as the moſt Numerous Part, were Invigorated by that Eternal and Irreconcilable Enmity, Implanted in human Nature, againſt Oppreſſion, which makes Men Rack their Inventions, to free themſelves from it, whenever Time offers the Means. Ibid.

The Notions, therefore, of theſe Men, were Reſolute and Vigorous, to *Defend* and Aſſert the Privileges and Rights of their Repreſentatives in Parliament; and in them, their own Hereditary Privileges: They plainly enough Collected from the King's own Declarations and Anſwers, Rules Strong enough to Condemn all his Proceedings, in Oppoſition to, and without Parliaments.

This

This Paper War, or Military Debates, being thus finiſhed, it is not Clear, what were thoſe ſpecial or particular Grounds, upon, or for which, the Hoſtilities Commenced and Proceeded to ſuch Degrees of Animoſity, and Univerſal Fightings and Bloodſhed, as never before, in ſo ſhort a Time, appeared in *Great Britain.*

SECT. XCIX.

It is Foreign to this Undertaking, to write the Hiſtory of the *War*, and yet the Repreſentations before Stated, without a ſhort Repertory of the various Efforts and Succeſſes, after ſuch uncommon Preparations in the *Theory*, as had been before made, would appear Defective.

D'Orleans. It may, with great Truth, be aſſerted, *That never was any War, before this, carried on with greater Haſte to Overcome, or be Vanquiſhed*; for, like young Warriors, each Side, where-ever they met, Attacked the other, as if each Engagement was to be the laſt, without waiting for the Events of Lingring Encampments; and yet, nevertheleſs, the Paper War continued, concurrent with the Fighting; for both Sides found it neceſſary to Appeal continually to the People, by ſhewing them, not only the Reaſonableneſs of their Proceedings, but their Inclinations to Peace and Tranquillity; and for this End, the Parliament Sanderſon. (together with their Inſtructions) Depoſited in the Hands of their General (the Earl of *Eſſex*) their laſt Petition to be preſented to the King, before any Blow ſhould be adventured on: In which, they Epitomiz'd, what had been done, and what was now a doing, to Grieve them, and remonſtrated to his Majeſty, their own Difficulties; they prayed what they deſired to be done on the King's Part, and promiſed what they would do on theirs, in order to prevent a War, after this ſhort manner, *viz.*

That the Party prevailing with his Majeſty (meaning the Queen, the *Nuncio*, and the *Romiſh* Prieſts) *had attempted to Alter the Antient Government, and to Introduce Popery in the Church, and Tyranny in the State.*

That

That this Party had long Corrupted the King's Counſels, Abuſed his Power, and, by untimely Diſſolving Parliaments, had often hindred the Redreſſing of thoſe Miſchiefs.

That this Party being now Diſabled to avoid the Powers of this Parliament, had Attempted to Overcome *the ſame by Force:*

That they had Excited and Foſtered the Rebellion in Ireland, *and had endeavoured to begin the like* Maſſacre *in* England.

That this Party had now drawn his Majeſty to make War upon his Parliament, in order to Root out Parliaments, leading with, or in the King's Perſon, an Army againſt them, as if his Majeſty intended, by Conqueſt, to Eſtabliſh an Abſolute and Unlimited Power over them.

That this Party did now ſeek to bring Over the Rebels of Ireland, *and other Forces from Beyond the Seas, to Join them.*

The Parliament repreſented, *That they being Deprived of the King's Protection, and the* Authors *of thoſe Miſchiefs, being in the greateſt Power and Favour with him, and Defended by his Majeſty, againſt the* Juſtice *of Parliament; They therefore had, for the* Defence *of the Laws and Liberties of the Kingdom, and of the Privileges and Power of Parliament,* Taken up Arms.

The Parliament therefore prayed the King, *To withdraw his Royal Preſence and Countenance from thoſe Perſons, and to leave them to be ſuppreſs'd by that Power, the Parliament had ſent againſt them, and not to mix his Majeſty's Dangers with theirs, but to* Return, without Armed Forces, *to his Parliament.*

The Parliament did, on their Parts, profeſs, *That they would Receive his Majeſty with all Honour, Yield him Obedience, and Endeavour to ſecure his Perſon and Eſtate, and, to the utmoſt of their Power, Procure and Eſtabliſh to his Majeſty, and his People, all the Bleſſings of a Glorious and Happy Reign.*

The Earl of *Eſſex* ſent a Firſt, and Second Meſſage to his Majeſty, at *Shrewsbury*, deſiring *a ſafe Conduct for Meſſengers to Deliver this Petition*; but the King *Impoſed* Qualifications on the Meſſengers that ſhould bring it, *viz. That None of them ſhould be any of the Members whom he had Impeached*, &c.

This Impoſition on the Meſſengers, proved to the Parliament, That his Majeſty was now obſtinately Reſolved to try by *Force of Arms*, the Legality of the **Invitation** of the *Scots* Invaſion; and, therefore, ſince that Queſtion was put in Iſſue to be Tried by Battel, the Petition was, for that Reaſon, looked on as Rejected; and the King, on his Part, Publiſhed and Repreſented, *That the Parliament's Army was Raiſed to* Murder *and* Depoſe *him*. Thus they Aſperſed each other's Army, and each other's Undertakings.

SECT. C.

A SHORT Repertory, therefore, of the Proceedings in War and Bloodſhed, will appear as follows;

The Battle at *Edge-Hill*, on the 23d Day of *October*, 1642, made only an Entrance, but was far from being a Deciſion of the Controverſy, for each Side, claimed the Victory; however, by the King's Marching nearer to *London*, whilſt the Parliament's Army Marched farther off, to *Warwick*, the Parliament, and the City of *London*, were put into a terrible Conſternation, inſomuch, that it has been confidently written, *That had the King Marched briskly up to the Capital, the War would have been at an End.*

Prince *Rupert* muſt needs go thither alone, and Undertook to Drive the Parliament from *Weſtminſter*; but the Spirit of the *Engliſh* Nation (as Father *D'Orleans* Notes) always predominates, even in thoſe who are beſt Affected to Kingly Government: *That* Engliſh *Spirit* (Repeats the *Frenchman*) *always full of the Conceit of thoſe Liberties, that have been ſo Fatal to the Kingdom's Peace, prevailed with moſt of the King's Counſel, to Oppoſe that Deſign, pretending, it was Dangerous for the King to put it in Execution himſelf, and worſe for the City, to have it done by the Prince, who was young, and hot, and might*

might ſet Fire to that Metropolis; But that the true Meaning of thoſe Counſellors was, They feared, if the King Entered *London*, with Sword in Hand, he might pretend to a Right of Conqueſt, and make himſelf Abſolute; and therefore they Choſe and Adviſed, rather to hearken to the Propoſals for Peace, then made by the Parliament, than to proceed in ſuch a Dangerous Undertaking; whereupon, the King conſented to a Conference, or Treaty; but the ſame was broken off, by the Fight at *Brentford*, within Seven Miles of *London*, and the War went on as follows:

VICTORIES *for the* KING *in* 1642.

15 *Nov.* At *Brentford* aforeſaid, where many were ſurprized, and 500 made Priſoners.

This Aſſault, pending the Treaty, and after the Parliament had Ordered their Army to forbear Hoſtilities, was called a perfidious Part, as bad as maſſacring of the Parliament's Forces, whilſt they reſted under a Treaty (as they thought) ſecure.

19 *Jan.* At *Liskard* in *Cornwall*, where the Parliament's Forces were defeated, and 1200 made Priſoners, and their Cannon and Ammunition taken.

19 *March.* At *Hopton-Heath* near *Stafford*; but the King's General the Earl of *Northampton*, was there killed, which turned it rather to a Defeat, than a Victory.

GARRISONS *taken for the* KING *in* 1642.

5 *Dec. Marlborough*;

20 *Jan. Belvoir-Caſtle* taken.

2 *Feb. Cirenceſter* ſtormed by Prince *Rupert*, and taken, and 1200 Men made Priſoners.

23 *March, Grantham* taken.

VICTORIES *for the* PARLIAMENT *in* 1642.

23 *Mar.* At *Glouceſter*, where an intire Part of the King's Army (being 2000) then Beſieging that City, were ſurprized and made Priſoners whilſt their General was Abſent at *Oxford*.

GAR-

GARRISONS *taken for the* PARLIAMENT *in* 1642.

1 *Dec. Farnham-Caſtle.*
13 *Dec. Wincheſter.*
29 *Dec. Chicheſter.*
20 *Jan. Leeds* and *Doncaſter.*
21 *March, Malmsbury.*

SECT. CI.

Clarendon, Vol. I. 310. AT this Period, in the End of the Year 1642. and before the Scene of the Year 1643. was opened, it is Material to relate the Parliament's new Application to, and *Sollicitation* of the *Scots*, to make a ſecond Invaſion of *England*, and come to their Reſcue and Aſſiſtance.

For which End, the *Inviters*, finding that the firſt Battle at *Edge-Hill*, had diſcovered, That the Force or Power on either Side, was too near an Equality; and that the Major Part of both Houſes, which the Noble Hiſtorian calls *half-hearted and half-witted*, were paſſionately bent to make Overtures of Peace, the *Inviters* therefore, by a ſagacious Foreſight, and in Order to recover the Spirits of the Fearful, made in the Houſe a Motion, which, at firſt View, ſeemed unpopular to both Nations; *viz.* to ſend an Expreſs to *Scotland*, to ſollicite and conjure that People to come to their Aſſiſtance, which was an Overture Diſagreeable in *England*, when it was remembred, what the Northern Parts had paid for Contributions.

But above all, the People might infer from it, an abſolute *Diffidence* in their own Strength, and in *Scotland* it would be Accounted an Acknowledgement, that the People of *England* ſtood not ſo well affected to their own Freedom and Liberties as the *Inviters* and Managers had perſuaded.

Vol. I. 61. But to obviate and prevent the ill Effect of ſuch Speculations, the politic *Inviters* Repreſented to the *Engliſh*, that they ought to endeavour ſo to make Peace, that they might not be Diſappointed of it, and that therefore if they ſhould make ſuch an Application for Peace, as might imply the giving over the Thoughts of War, they muſt expect ſuch a Peace, as the Mercy of thoſe who were as immeaſurably provoked (as they were Revengeful) would Impoſe or conſent to; and that therefore the Pro-

Propoſition of ſending that Meſſage to *Scotland*, was as reaſonable as ſeaſonable, and that there could be no Method to procure a good Peace, but by a Treaty; in which Propoſitions are uſually made by both Sides, which at firſt are never intended to be their *Ultimates*, it being the Courſe in all ſuch Affairs to to ask more than was expected, to the Intent to have Room in ſome Parts to recede.

And to the *Scots*, thoſe Diſcerning Managers repreſented, That the Matters in Diſpute between the King and the *Engliſh* Parliament, was a joint Concernment; That the Fate of *Scotland* was involved in what ſhould befall the Parliament of *England*, and that it was impoſſible for the *Scots* (if they ſtood Spectators) long to enjoy the great *Conceſſions* they had obtained; becauſe when the Parliament of *England*, by whoſe Friendſhip, Power, and Authority, they had obtained thoſe *Conceſſions*, ſhould, by the King's Army, be oppreſſed, and forced to yield to ſuch Conditions as ſhould be preſcribed, the King would employ the ſame Army to enable him to *Reſcind his Conceſſions* in *Scotland*, and to Revenge thoſe Indignities, which the Miniſters would eaſily perſuade his Majeſty, he had *ſuffered*, from his Native Kingdom. Clarendon, Vol. II. 368. Vol. I. 379

Theſe Arguments prevailed in both Nations, as will be ſeen in the Sequel.

However, the Parliament were, by the then Conjuncture, obliged to ſend, and they did ſend Propoſitions, conſiſting of 14 Articles of Peace, as they called them, to the King at *Oxford*, in *February* 1642. whereby they requeſted his Majeſty to *Disband* his Armies, *Return* to the Parliament, *Leave* Delinquents to the Juſtice of Parliament; to *Diſarm* the Papiſts and (amongſt ſome extravagant Things) to *give* the Royal Aſſent to divers Bills therein mentioned; for which, when the *Inviting* Managers were blamed, they anſwered as before, *That it was the natural Courſe, in all Affairs of this Nature, to ask too much, to the End they might obtain enough, although not ſo much; and that it concerned them as much to make Demands of great Moment to the King, from which they meant to Recede, as others upon which they muſt Inſiſt.* Sanderſ. 599. Clarendon, Vol. II. 119, 124.

The King's Miniſters (whom the Queen and her Popiſh Prieſts guided) in Anſwer to theſe Propoſitions, made *Counter-*

Propoſitions more Exceſſive, whereby the King required the Parliament to *Reſtore* his Revenues, Magazines, Towns, Forts, and Ships; to *Renounce* and Recall, whatſoever had been done or publiſhed, contrary to the Laws, or Derogatory to his Majeſty's Power and Rights; to *Diſclaim* whatſoever Powers had been Claimed and Exerciſed, by Impriſonment of the Perſons and Impoſing on the Eſtates of his Subjects, by both, or either Houſes of Parliament; and that all ſuch Perſons, as ſhould upon a Treaty be **Excepted** out of a general Pardon, ſhould be Tried *per Pares*.

The Parliament (who had at that Time in their Hands a competent Power) could not enter into a Treaty upon theſe Grounds, without firſt giving up all the Points in Queſtion, and transferring to the King an Abſolute Power, to Diſpoſe of them at Diſcretion, or, in other Words, to ſurrender themſelves Priſoners of War bound Hand and Foot.

SECT. CII.

A TREATY therefore on this Foot, was looked upon as Impoſing ſuch Conditions, as People, who are able to contend, are not uſually perſuaded to ſubmit to. The Propoſitions therefore on either Side, inſtead of Inclining to Peace, proved a Sounding to War: But to return to the Year 1643.

VICTORIES *for the* KING 1643.

3 *Apr.* At *Bramham-Moor*, in *Yorkſhire*.
11 *Apr.* At *Ancaſter*.
6 *May*, At *Banbury*.
16 *May*, At *Stratton*, in *Cornwall*, and 1700 made Priſoners.
18 *May*, At *Wickham*, and *Chalgrave-Field*, where the Great Mr. *Hampden* receiv'd his Mortal Wound; which Defeat was occaſioned by Collonel *Hurry* (a *Scotſman*) Deſerting the Parliament's Service, who being afterwards Taken by the Parliament, was Hanged for the Deſertion.
12 *July*, At *Buckingham*, where *Lucas* Defeated *Middleton*'s Horſe.
5 *July*, At *Lanſdown*.
13 *July*, At *Roundway-Down*.
8 *Sept.* At *Wincheſter*. At which Three laſt Places, Sir *William Waller* was each Time Defeated.

Clarendon, Vol. II. 260, 261.

22 *Mar.*

22 *Mar.* At *Newark*, where Prince *Rupert* ſurprized and Diſarmed Sir *Thomas Fairfax*'s whole Army, then *Beſieging* that Town, and took 4000 Arms, 11 Cannons, 2 Mortars, and 50 Barrels of Powder. Clarendon, Vol. II. 406.

GARRISONS *Taken, and* SIEGES *Raiſed, for the* KING, *in* 1643.

26 *Mar. Scarborough Caſtle.*
21 *Apr. Litchfield Cloſe.*
2 *July, Bradford* Taken.
3 *July, Burton upon Trent* Stormed and Taken by the Queen.
24 *July,* **Briſtol** was Aſſaulted and Stormed by Prince *Rupert*, who, on the 2d Day after he had Inveſted it, Took it, and made 3000 Priſoners.
2 *Aug. Dorcheſter, Weymouth,* and *Portland.*
2 *Sept. Barnſtaple* and *Biddeford.*
6 *Octob. Dartmouth.*
Arundel Caſtle, in *Suſſex.*
Beeſton Caſtle, in *Cheſhire.*
Laply Houſe, in *Staffordſhire.*
Grafton Houſe, in *Northamptonſhire.*
Crew Houſe, in *Cheſhire.*
—*Febr. Weymouth,* in *Devonſhire,* Taken.

VICTORIES *for the* PARLIAMENT *in* 1643.

27 *May,* At *Wakefield.*
20 *Sept.* At *Newberry*, where the King's Army Attacked *Eſſex*, in his March back, after his Raiſing the Siege of *Glouceſter*, but were worſted, and the Earls of *Sunderland* and *Carnarvon*, and Lord *Falkland*, on the King's Side, killed; and *Eſſex*, without much Loſs, Effected and Continued his March to *London.*
11 *Octob.* At *Winſley*, or *Horn-Caſtle*, in *Lincolnſhire.*
25 *Jan.* At *Selby*, near *York*, where Sir *Thomas Fairfax* totally Routed Collonel *Bellaſis*, Taking him, and many of his Officers, Priſoners, with all his Cannon.
—*Jan.* At *Namptwich*, where Sir *Thomas Fairfax* totally Routed Lord *Byron*, Raiſed the Siege, and utterly Broke and Diſperſed all the *Iriſh* Forces lately Arrived at *Cheſter*, from *Dublin*; 1500 Men, beſides all the Chief Officers, being made Priſoners, and all their Cannon and Baggage Taken.

GARRI-

GARRISONS *Taken, and* SIEGES *Raiſed, for the* PARLIAMENT *in* 1643.

26 *Apr. Reading* (after a Siege of 10 Days) was Taken; but at this Time, and afterwards, it was objected to *Eſſex*, That if he had March'd directly to *Oxford*, inſtead of Halting at *Reading*, he had put an End to the War; for *Eſſex*'s March ſo near to *Oxford*, had ſtruck into the Inhabitants, and even into the Court (where the King in Perſon was) the greateſt Terror.

5 *June*, *Taunton* and *Bridgwater*, Taken.

16 *Sept. Lynn*, in *Norfolk*, Taken.

12 *Octob.* Siege of *Hull* Raiſed by Sir *Thomas Fairfax*.

12 *October*, *Lincoln*, *Gainsborough*, and *Bolingbroke-Caſtle*, Taken.

Clarendon, Vol. II. 300. But the War, ſoon after the Taking of *Reading* from the King, became, in the Summer Part of this Year, 1643, in ſo many Inſtances Succeſsful to the King, that it produced not only a Pannick, but an Ominous Preſage to the Parliament, of a diſmal Downfal; for the direful News of Taking *Briſtol*, ſtruck them, in their Turn, as with a Sentence of Death, after their Promiſes of Finiſhing the War by a fixed Day: For *Eſſex*, in the Beginning of that Year, Returned from *Chalgrave Field*, *&c.* to *London*, with his Broken and Diſmayed Troops; and Ibid. 302, 317. Sir *William Waller*'s Army, in the Weſt, was totally Deſtroyed; ſo that the War ſeemed to be even at an End, in a Senſe very Contrary to what they had promiſed: Which remarkable Tranſactions, cauſed many Reſolutions to be taken in the Councils of both Sides.

SECT. CIII.

THE King, on the next Day after he received Aſſurance of the Taking of *Briſtol*, publiſhed a Declaration, in order (as his Majeſty apprehended) to Reſtore Peace, which being made at a Time when his Majeſty was every where Victorious, and had a Strong Army at *Oxford*, ready to have Marched directly to *London*, and preſcribed the Terms of Peace, made a deeper *Impreſſion*, than all his other Meſſages and Overtures, had done, either before, or after, this Time, and might have been Effectual,

if

if it had not contained ſome Terrible and Menacing Intimations, diſcovering too plainly, the Bitterneſs of the King's Mind (or rather of the Queen's) to be Immoveable and Implacable; for his Majeſty Declared, *That the World knew with what Juſtice he had* **Repaired** *his Subjects, for all the* **Preſſures** *and Inconveniencies they had formerly* **Borne**, *by Paſſing Excellent Laws* (meaning the Acts of Reformation) *Paſſed in this Parliament.* Clarendon, Vol. II. 302.

But then the Declaration proceeded with **Invectives**, *viz.*

That it was now ſo Evident, how all the Laws and Liberties of the Nation, had been Invaded and Diſturbed, by Sedition *and* Treaſon, *and by* **Thoſe** (meaning the *Inviting* Members) *who had neither Reverence towards God, nor Affection to Men*; Ibid.

That his Majeſty hoped his People's Eyes were now opened, to ſee how they were ſeduced to Rebel, and to Abhor the Seducers. Ibid. 303

His Majeſty Declared, *That he had no Thought of Invading the Liberty or Property of his Subjects, or Violating the Juſt Privileges of Parliament*;

That he deſired to Govern *only by thoſe good Laws, which, 'till they were Oppreſſed by this* Odious Rebellion, *had preſerved the Nation Happy*: And his Majeſty acknowledged, *That the Juſt* Privileges *of Parliament, were an* Eſſential Part *of thoſe Laws.* Ibid. 304.

The Declaration Contained and Advanced theſe Queſtions;

I. *Whether the Men who perſecuted Orthodox Miniſters, and put in their Places,* Ignorant, Seditious, *and* Schiſmatical *Preachers, were like to Advance the True Religion?* Ibid.

II. *Whether thoſe Men, who, without Law,* Impoſed *Taxes, and Impriſoned and* Murdered *their Fellow Subjects, were like to* Preſerve *Liberty and Property?*

III. *Whether thoſe Men, who had denied his Majeſty his Negative Voice, and had, by Force,* Awed, *Terrified,*

and Driven away, many of the Members, and had, as far as in them lay, **Diſſolved** *the preſent Parliament, were likely to Vindicate and Uphold the* Privileges *of Parliament?*

The Declaration Conjures the People to remember their Duty, which their Oaths of Allegiance and Supremacy obliged them to, and which no Vow or Covenant Contrived and Adminiſtred to, and by themſelves, could Cancel or Evade, and not ſuffer themſelves to be Miſled, and their Country Undone; nor to become *Slaves* to their Fellow Subjects, by the Malice and Cunning of **State-Impoſtors.**

Clarendon, Vol.II. 305. The Declaration warns the People, not to be taught by theſe *Seducers*, That their Safety conſiſted in *Deſpair*; or, That they could ſecure themſelves, by perſevering in Diſobedience.

And Declares, *That whoſoever would* Redeem *their paſt Crimes, by Apprehending, Oppoſing, and Reducing*, thoſe who ſhould continue to Bear Arms *againſt his Majeſty, ſhould have* Cauſe to magnify his Mercy.

This Declaration, although it was moſt Artfully Laboured and Couched in ſuch general Terms, as no Man could conclude any thing in particular, yet the Proſpect of the King's Growing Power, turned Mens Thoughts *to thoſe Parts only, that were Merciful*; and it ſo far prevailed, that upon long Debates, a Ibid. 318. conſiderable Majority in both Houſes, Voted Propoſitions of *Peace*, to be prepared, and ſent to *Oxford*, and the Lords accordingly prepared the Propoſitions.

The *Inviting* Members were never ſo **Puzzled** as now, Ibid. 319. how to manage, ſo, that a Treaty, in theſe their *Low* and *Diſmal* Circumſtances, might be Evaded; and Lord *Clarendon* relates fully, how it was *Evaded*.

In ſhort, the Spirit of the Queen, and of her Popiſh Party, ſignified in this Declaration, ſhone out in its Brightneſs: And therefore, inſtead of inclining to Peace, it proved an *Incentive* to War; for thoſe *provoking* Aſperſions, by which the *Inviters* or Active Members in both Houſes were *Wounded*, by Calling them *Seducers, Odious Rebels, Murderers, State-Impoſtors*, and the Parliament it ſelf Denied to be a Parliament, or, which

is

is all one, to be no free Parliament; poſſeſſed the whole Parliament with *Fear* and *Fury*. The Preachers were no leſs galled and fired, and they, from their Pulpits, in a Manner as fiery and violent, as was the Declaration, returned the Reproaches, and incenſed the People with Alarms of Ruin, Military Plunders, and Bloodſhed, and publiſhed, that 20000 **Iriſh Rebels** were already landed, to cut Throats, and *Maſſacre*; and theſe Efforts inverted the very End of the Declaration (if it meant Peace) for the King by it, **Terrified** even thoſe and *Thoſe* only, who had Power to hurt him, and plainly enough told them, they were not to expect Safety, unleſs they were able, firſt to diſable him to repay them with Revenge; for the *Vengeance* here denounced, was more furious than his firſt Declaration of War, and could mean nothing leſs, than a Summons to ſurrender at Diſcretion: The *Terror* therefore (when nothing elſe could have done it) Enabled the Parliament to *Muſter* ſuch an Army, as *Reſcued* out of the King's Hands their Beloved City *Glouceſter*, although that Siege was compoſed of the King's united Forces; and ſhewed plainly, that his Majeſty was not to treat them otherwiſe than as Men having in their Hands, Arms and Power, which muſt be overcome, before they were preſcribed to.

Whereas if thoſe *Invectives* and *Menaces* had been omitted, and proper Lenitives to particular Men, had been inſerted and applied; a Treaty, at this Time, muſt neceſſarily have been Embraced, and probably had ended in a good Agreement; for no Conjuncture ever afforded the King, ſuch an advantageous and powerful Opportunity.

SECT. CIV.

ON the King's Side, the Proſpect of *Prevailing*, was ſo apparent, that five Lords (to wit) the Earls of *Bedford*, *Holland* and *Clare*, and the Lords *Conway* and *Lovelace*, like Doves from the Ark, Deſerted the Parliament, and haſtened to make their Peace with the King at *Oxford*; But in regard ſome of theſe Lords were primary *Inviters* and Sollicitors of the *Scots* Invaſion, and the reſt Approvers of it, the Queen's Influence cauſed it to be Debated in Council, *Whether they ſhould be Received, and how Received*; and, however, prevented a kind Reception: Theſe Debates, and that Coldneſs, convinced Clarendon, Vol. II. 326.

PAGINATION INCORRECT

convinced thoſe Lords of their Miſtake, and put them upon finding Means to return (as they did) into the Parliament Quarters; but this Uſage at *Oxford*, was ſuch an Evidence of the Queen's Power, and Averſion to recede from the vindictive Reſolutions, as made the King looked upon as Implacable, and made many others, who intended to follow theſe Lords Example, lay aſide their Inclinations.

The King at this Time, that is, before the Siege of *Glouceſter*, was for joining the main Strength of his Forces, and for Marching with two Armies directly for *London*, which, if he had done, he might have preſcribed Laws to that City, and conſequently to the Parliament; but his Council were of another Mind, and adviſed the Siege of *Glouceſter*, and ſo made him commit the ſame Error, the Earl of *Eſſex* had been juſt before accuſed of, for Beſieging *Reading*, when he ſhould have Marched directly to *Oxford*: The Jeſuit *D'Orleans* writes, *That many of thoſe, who were neareſt about the King, were tender of the* Parliament, adding, *That that Manner of Proceeding is very Agreeable to the* Engliſh *Nation, which looks upon that* Aſſembly, *as the Preſerver of a* Liberty *thoſe People pay an* Idolatrous Worſhip *to.*

D'Orleans, p. 67.

SECT. CV.

THE Counſels and Reſolutions on the Parliament's Side, were at this Time, grounded on theſe Foundations: They ſaw what Changes the Difficulties of War, and ſome Diſappointments and ill Succeſſes, had made in Mens Minds, both in the two Houſes, and in the City and Country; whereas Victory never wants Friends; they therefore quicken'd their Sollicitations with *Scotland*, for a *Second Invaſion*; and for that End, in 1643. in the midſt of their Diſtraction, they diſpatched away Sir *Henry Vane*, and other Commiſſioners, to *Scotland*, who ſcrupled no Terms to obtain Aſſiſtance; for when the *Scots* inſiſted on a Uniformity in Religion, and Church Government, *viz. To Aboliſh* Epiſcopacy, *and Eſtabliſh* Presbytery, *and that* England *ſhould, for that Purpoſe, enter into, and take their Solemn Covenant*; Sir *Henry Vane* complied, but over-reached them, by Adding thereto the Word (*League*) the Craft whereof, not being perceived, was readily conſented to; but the Evaſion intended, was, Whereas a Solemn *Covenant* could not (as he thought)

Clarendon, Vol. II. 378.

Ibid. 368.
Ibid. 500.

thought) be upon any Pretence broken or illuded, yet a *League* between two Nations might, for Reaſons of State, be, and often is, laid aſide and diſregarded.

The **Scots** having thus obtained (as they thought) their Ends in Point of Religion, and having Received a good Sum of Money (lent by the Citizens of *London*) they raiſed an Army to aſſiſt the Parliament, and in *January* 1643. in the Depth of *Winter*, at a Time when there was a great Froſt and Snow, paſſed the *Tweed*, and a ſecond Time *Invaded England*.

SECT. CVI.

THE next Occurrence in the King's Council, was, That the Earl of *Montroſs*, in *April* 1643. privately withdrew himſelf from *Scotland*, and gave the King at *Oxford*, a clear Information, That the *Scots* would certainly Embrace the Propoſitions of their *Engliſh* Brethren, and would Aſſemble their Parliament, and aſſiſt them with an Army, and a Second Time *Invade England*; by which Acceſſion of Forces, all Affairs would be Changed, and the King's Power *Oppreſſed*.

Montroſs therefore, knowing the King's Commanding *Influence* over the *Iriſh* Rebels, did, in order to divert this Inundation, propoſe theſe *ſmart* Expedients.

I. *That the King ſhould agree to a* Ceſſation, *and afterwards ſhould make a* Peace *with the* Iriſh *Rebels, by which Means the Proteſtant Forces under* Ormond, *might be withdrawn, which would add to the King's Armies in* England *a great* Increaſe of Power.

II. *That Part of the Popiſh Forces, eſpecially of the* Iriſh Mack-Donnells, *ſhould be tranſported from* Ulſter *into the High-Lands of* Scotland, *where the* Scotiſh *Clan of* Mack-Donalds *would join them, and make a Foundation on which* Montroſs *might raiſe ſuch a* Scotiſh *Army, as might Enable him to give the* Scots *ſo much* Trouble *at Home, That they ſhould not be at Leiſure to* Trouble *their Neighbours.*

III. *That* Daniſh *Forces might be procured, and reaſonably Expected, in regard the King's Mother was a Daughter of* Denmark.

Clarendon, Vol. II. 458.

At this Time, the Earl of *Antrim*, whoſe Qualifications are before related, was at *Oxford*, where he was, by the Queen, well reſpected, to whom, no Doubt, he made heavy Complaints of Sir *William Parſons*, for Defeating the moſt hopeful Conſpiracy to ſeize *Dublin* Caſtle, that was ever Formed.

Ibid. 617. Lord *Clarendon*, ſays, *That* Antrim's *Preſence and Name had given great Countenance to the* **Maſſacring** *Iriſh, but that*

Ibid. 618. *they relied more on his Brother* Alexander Mac-Donnell *a Stout and active Officer, who was* faſt *to their Party, and in their moſt* ſecret *Councils, and whom, for Eminency, they called* **Callito.**

Ibid. 619. *That the King was well ſatisfied of* Antrim's *Power with the Papiſts in* Ulſter; *for no Body ſuſpected his Original Conjunction with the Rebels.*

Ibid. 622, 618. *Montroſs* therefore Engaged *Antrim* in the Undertaking, and *Antrim* promiſed to Land in *Scotland* before the firſt of *April* 1644. with 2000 ſtout Soldiers (for *Montroſs* deſired no more) and the King *Encouraged* the Deſign, and complied with what *Antrim* deſired, *viz.* his Majeſty gave him a *Commiſſion*, and made him a *Marquiſs*.

Ibid. 606. Lord *Clarendon* ſays, The King had long meditated to give ſuch a *Diſturbance* in *Scotland*, as might ſtay their Army at Home, to quench the Fire in their own Country:

Ibid. 556. And that the Reſolution, to make the *Ceſſation* with the *Iriſh* Rebels, was concluded with great Deliberation and Wiſdom, and was *Entred* into, with all the Reaſon imaginable, in

Ibid. 467. order to make a Peace there; Foraſmuch as the King chiefly *Depended* on the *Iriſh* Forces, by which his Power in the Year 1644. was to be *ſuſtained*.

But in ſo doing, his Majeſty laid aſide his *Promiſes*, to obſerve, without Violation, the Laws paſſed in this Parliament; for,

for, by theſe Reſolutions, the *Security* of the Adventurers was to be Enervated and Defeated.

SECT. CVII.

THE Execution of theſe private and Extraordinary Meaſures, will Illuſtrate all the Operations that followed, *viz.*

I. When *Ormond* received Orders, in Relation to the Ceſſation, with Intimations about a future Peace with the *Iriſh* Rebels, he inſtantly, and before any *Ceſſation* was made, or could be made, Detached and *Tranſported* Two good Regiments of Foot, and One Troop of Horſe, under the Command of Collonel *Min*, and Sir *William St. Leger*, from *Munſter*, in *Ireland*, which Arrived, in the Beginning of *Auguſt* 1643, at *Briſtol*, where Lord *Hopton* took them under his Command, and with them firſt, made Part of that Army, which Beſieged *Glouceſter*, and afterwards performed great Services in the *Weſt*: This proves, that *Ormond* knew the Rebels would be Obedient to the King's Intimations. Clarendon, Vol. II. 439.

II. The Commiſſion to *Ormond*, to make the *Ceſſation*, paſſed the great Seal of *Ireland*, *July* 31, 1643, and the Ceſſation was Proclaimed on the 15th of *September*, 1643. Sanderſ. 641.

The Peace between the King, and thoſe Rebels, was unaccountably protracted, until *July* 1646, when it was Concluded.

Ormond haſted, and ſent Forces from about *Dublin*, which Landed *November* 13, 1643, at *Cheſter*, where Lord *Byron* Received and Commanded them. They were a right good Body of Foot, and Excellent Men, both Officers and Soldiers, and being uſed to little Eaſe in *Ireland*, the Seaſon of the Year made on them little Impreſſion; and being always ready, and deſirous of Action, they Attempted, and Succeeded, in great Exploits in *Cheſhire*, and *North-Wales*. Ibid. 639. Clarendon, Vol. II. 456.

As to the concerted Diverſion in *Scotland*, the Marquiſs of *Antrim*, by the Countenance and Aſſiſtance of the Marquiſs of *Ormond*, ſent Over his Brother *Alexander Mackdonald* (*Calkito*) a Stout and Active Officer, with a Regiment of 1500 Stout Soldiers, who, about *April* 1644, Landed in the Highlands, where *Montroſs*, Ibid. 618.

Montroſs, with Joy, received them: To whom he Joined many of his own Countrymen, and every Day Increaſing in Power, he, during the Space of about One Year and an Half, fought and prevailed in ſo many Battles, that he Over-run, and Subdued the Country, and actually took *Edinburgh*, and made himſelf, upon the Matter, Maſter of *Scotland*.

But *Montroſs*, and *Calkito*, in the Midſt of their Pride and Victories, Re-acted upon the poor Proteſtants in *Argyle*, and *Cantyre*, the *Iriſh* **Maſſacre**, by Murdering Men, Women, and Children, and added to the Cruelty, the **Burning** their Houſes and Habitations: After which, *Montroſs* was, in his Security, Overtaken near the *Tweed*, by *David Leſly*, who being called Home, had Marched with the *Scotiſh* Horſe from *Hereford*, in *England*, and, by long Marches, came unexpectedly upon *Montroſs*, in *Scotland*, and totally **Routed** him, and his Forces: After which, *Montroſs* could never do any thing, ſuitable to his former Undertakings, but was himſelf brought to a Sad and Cruel *Cataſtrophe*.

SECT. CVIII.

BUT to return to the Year 1643.

It was obſerved, That a Major Part of the Lords, and a great Number of the Commons, had withdrawn themſelves from the Parliament of *Weſtminſter*; and therefore it was Counſelled, and the King Reſolved, by a Proclamation, to Call, and did Call, thoſe Lords and Commons to Meet at *Oxford*, on the 30th of *January*, 1643, who Sat there as a Parliament; which *Oxford*-Part of the Parliament, when it met, applied it ſelf roundly to the Methods of Reſtoring Peace; but becauſe the King's Letters propoſing the Methods of a Treaty, were directed to the Lords and Commons of Parliament Aſſembled at *Weſtminſter*, and not to the Lords and Commons Aſſembled in the Parliament of **England**, this Part of the *Oxford* People's Endeavours, Vaniſhed into Nothing.

The King preſſed this *Oxford* Parliament, to Vote the Two Houſes at *Weſtminſter*, to be no *Parliament*; but the *Oxford* Parliament were afraid, not only of *War*, but of *Victory* to either Side, and therefore Declined to Vote the Two Houſes at *Weſtminſter*,

minſter, to be *no Parliament*; but the King prevailed with the Lords and Commons at *Oxford*, to come into theſe briſk Votes and Reſolutions, *viz.* Echard 596 Clarendon, Vol. II. 454

I. *That ſuch* Scots *as had Conſented to the Declaration of* Scotland, *concerning their preſent Expedition into* England, *had Denounced* War *againſt* England.

II. *That the* Engliſh *were Bound to Reſiſt the* Scots *as Traytors and Enemies; and that all ſuch as ſhould Abet, Aid, or Aſſiſt the* Scots, *ſhould be deemed Traytors and Enemies to the State.*

III. *That the Lords and Commons at* Weſtminſter, *who had Conſented to the Raiſing Forces under the Earl of* Eſſex, *had Levied* War *againſt the King, and were therein Guilty of High Treaſon.*

IV. *That the Lords and Commons at* Weſtminſter, *who had given their Conſents to the then preſent Coming in of the* Scots, *in a* Warlike Manner, *had therein Committed High Treaſon, and ought to be Proceeded againſt as Traytors to the King and Kingdom.*

This was Plain-Dealing, and a fair and open Way of Proceeding, to put all Matters fairly in **Iſſue**, between the King and Parliament, to be *Decided* by the longeſt Sword.

But becauſe this *Oxford* Parliament did not readily come into the Raiſing Money, without which, theſe Bluſtering Reſolutions would paſs away as an Empty Sound, without making any Alteration, the King grew Uneaſy, and *Diſmiſſed* them with the Character of his **Mungrel** Parliament.

SECT. CIX.

THESE being the Conſultations and Reſolutions on both Sides, in the latter End of the Year 1643, It comes now in Turn, to ſee what were the Operations of the Year 1644.

VICTORIES *for the* KING *in* 1644.

29 *June*, At *Copredy-Bridge*, where the King Baffled, and, in a manner, Routed Sir *William Waller*.

1 *Sept.* in *Cornwall*, where the King, being Joined with the *Iriſh* Forces, Tranſported from *Munſter* to *Briſtol*, his Majeſty purſued *Eſſex*, and Coop'd him up ſo narrowly in *Cornwall*, that *Eſſex* Abandoned his Army, Eſcaping away by Sea, Leaving his Horſe, under Sir *William Balfour*, to break through the King's Army, which they did; and his Foot, to ſave their Lives, laid down their Arms, and delivered up all their Cannon and Ammunition.

1 *March*, At *Pomfrett*, where Sir *Marmaduke Langdale* defeated the Parliament's Forces under Lord *Fairfax*, and raiſed the Siege.

GARRISONS *Taken, and* SIEGES *Raiſed, for the* KING, *in* 1644.

28 *Apr. Bolton*, in *Lancaſhire*, Stormed by Prince *Rupert*, and 800 put to the Sword.

14 *Sept.* The Siege of *Baſing-Houſe* Raiſed.

1 *Nov.* The Siege of *Baſing-Houſe* Raiſed a 2d Time.

VICTORIES *for the* PARLIAMENT *in* 1644.

29 *March*, At *Arlesford*, or *Cheriton Downe*, near *Winchester*, where Sir *William Waller* Routed the King's Army under Lord *Hopton*, which broke all the King's Meaſures in the Weſtern Parts, and obliged his Majeſty to Act this Year on the Defenſive.

3 *July*, At *Marſton Moore*, Four Miles from *York*, where the King's Armies, under Prince *Rupert*, and the Marquiſs of *Newcaſtle*, being Joined, and the Parliament's Forces being Joined under the Earl of *Mancheſter*, Sir *Thomas Fairfax*, and *Cromwell*, and the *Scots* under General *Leſley*, made numerous Armies, the Armies being, on each Side, about 24000 Men, in all 48000. They Engaged about Seven in the Afternoon, and after Prince *Rupert* had Routed not only the Main Body, compoſed of the *Scots*, but the Right Wing, Commanded by the Two *Fairfaxes*; at this diſmal Time it was, that

that *Cromwell* with Part of the Left Wing, fell in upon Prince *Rupert*'s victorious, but diſordered Troops, and routing them all, obtained a compleat Victory, killing and taking Priſoners 10,000 Men, with all the Arms and Ammunition, *&c.* by which Victory, the King's Power was grievouſly broken, though not quite ſuppreſſed.

27 *October*, At *Newberry* in *Berkſhire*, a ſecond Time.

GARRISONS *Taken, and* SIEGES *Raiſed, for the* PARLIAMENT *in* 1643.

Aug. Sheffield Caſtle.
Fretchwell-Houſe.
Balſover-Caſtle.
Wingfield Mannor-Houſe.
Welbeck-Houſe.

SECT. CX.

IN the latter End of the Campaign of this Year 1644. the Diſſenſions and Diſorders, as well amongſt the King's Counſellors and Generals, as in the Parliament, and amongſt their Generals, was pretty equal, and that *Diſagreeing* Temper produced the famous **Treaty at Uxbridge**, in which the King waved Invectives, and treated with the Parliament, by the Name of the Lords and Commons of *England*; which *Treaty* commenced on the 30th of *January* 1644. and laſted 20 Days, but expired, without coming to an Agreement in any one Particular; for both Sides proceeded with ſuch artificial Fineneſſes, as were never likely to end in any real or ſincere Compliance. However, an Obſervation on the Condition of both Sides, at that Juncture, may be Inſtructing.

As to the KING, his Majeſty's Affairs were in a Ruinous Condition; for it was apparent, That by one Stroke more, all his Power, in Point of War, would be quite extinguiſhed, which makes the Wonder great, why he inſiſted, ſo much (as he did) upon Points of Prerogative, and why he did not comply with any Terms, by which his Government and Poſſeſſion of his Throne might be Reſtored, at a Time, when he had againſt the prevailing Power, nothing to oppoſe; unleſs his Majeſty's too great Dependance on *Montroſs*'s wild Succeſſes, made him indifferent.

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As to the PARLIAMENT the Leading Men and the Generals, who were the great *Inviters* and Promoters of the firſt *Scots* Invaſion in *Auguſt* 1640. were ſufficiently perſuaded, from all the abſtruſe Proceedings on the King's Part, that their Condition was precarious, and differed not from the Condition of *Thomas* Duke of *Glouceſter*, the Earls of *Arundell*, *Warwick*, *&c.* who raiſed and aſſembled Forces at *Haringay-Park*, and reduced King *Richard* the Second's Government, to the Standard of the Conſtitution; and that therefore no *Security* could be depended on, ſo long as any Power in the King remained *unſuppreſſed*; theſe Gentlemen were incurably convinced, That if the King was Re-eſtabliſhed, it would be much eaſier for him, than for King *Richard* II. to repeal all ſuch Agreements as ſhould be made to ſecure their Safety, or what they had, with ſo much Blood, contended for and gained; and, conſequently, they ſhould be treated as were the Duke of *Glouceſter* and the Earls of *Arundell* and *Warwick*, by King *Richard* the Second.

Therefore theſe Mens greateſt Fear was, leſt the King, while any of his Power or Reputation remained, ſhould comply.

That this was their Apprehenſion, appears from what is written of one great Lord, the Earl of *Pembroke*, and two great Commoners, Mr. *Pierrepont*, and Mr. *Crew*, by the Noble Hiſtorian, who privately urged the King's Commiſſioners, at the Treaty of *Uxbridge*, to perſuade his Majeſty to comply with all the Parliament's Propoſitions, however extravagant; Inſiſting, that ſuch *Conceſſions* (the more ſurprizing they were) would create the beſt *Means*, by which the Meaſures of the violent Party might be *Confounded*; and inſinuating, that the King's Friends would, in a ſhort time after a Peace concluded, be able to recover all for him that he had then parted with, and to *Drive* thoſe unreaſonable Men out of the Kingdom; without conſidering, that the ſame *Power* would alſo *Drive* out of the Kingdom, the *Power* of Parliaments.

Theſe were the Diſpoſitions which occaſioned the **Treaty** of *Uxbridge* to break up, leaving Things in as much Confuſion as when it began.

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SECT. CXI.

THE Year 1645. Opened with a View of Competent Forces on Foot for the King: As to *Ireland*, the *Ceſſation* was continued, and the King had ſent a Commiſſion to *Ormond*, Dated at *Buckingham* the 24th of *June* 1644. Impowering him to make **Peace** with the *Iriſh* Rebels, which, at this Time, was very near concluded: And as to *Scotland*, *Montroſs* had, in effect, over-run and ſubdued it. He had, in fact, unſettled it, and introduced much Confuſion, but had not made or ſettled any eſtabliſhed Power, to which he might reſort, in caſe of a Diſappointment, which expoſed his Conduct, in regard that by one Defeat, given him by *Leſley*, all his volatile Succeſſes, like a Vapour, vaniſhed.

But at this Time, there went out into the King's Quarters, a Spirit of Confuſion and Diſorder; the Effects were *prodigious*, which infers the Cauſes to be *prodigious* too; for the *Events* of the Miſtakes at, and a little before, that Time, produced all that followed in the ſucceeding Years.

The Deſcription of them is accurately repreſented, by the Noble Hiſtorian, who is pleaſed to ſay, *That it was not poſſible to diſcourſe of the Particulars, with the Clearneſs that was neceſſary to ſubject them to common Underſtandings, without opening a Door for ſuch Reflexions upon the King himſelf, as ſeemed to call both his* Wiſdom *and* Steadineſs *into Queſtion, as if he wanted the one to apprehend and diſcover, and the other to prevent the Miſchiefs which were Evident and Impending.* Clarendon, Vol. II. 625, 626.

In ſhort, all the Controverſies between the Contending Parties, were, on the 4th of *June* 1645. brought to an *Iſſue*, at the laſt general Battle at *Naſeby* in *Northamptonſhire*, where the new General *Fairfax*, and his Lieutenant-General *Cromwell* Engaged, and totally **Routed** the King's Army; his Foot were made Priſoners, and all his Cannon, and Ammunition, and Baggage were taken.

This **Victory** Decided the Controverſy, and the King's Party, having received the mortal Stroke, fell into Convulſions;

Inſomuch that thoſe few Efforts or Struggles which they afterwards made, were but Indications of an expiring Body.

SECT. CXII.

IT is here obſervable, That the King, in all his Anſwers to thoſe Infinite Petitions and Invitations, which had been ſent him, to Return to his Parliament, had always objected, *That he could not Return, for* Fear *of Tumults at* Whitehall, whereas he knew, That his Proſecution for the *Invitation* and *Scots* Invaſion, was the *Cauſe* of thoſe Tumults.

But now when the King's **power**, to Revenge, was Extinguiſhed, his Majeſty laid aſide all his *Fears* of thoſe Tumults; and in *March* 1645. he ſent a Meſſage to the Parliament, offering to *Disband* his remaining Forces, and to come to and reſide with the Parliament, provided his Adherents might live on their own Eſtates in Peace; but the Parliament Argued, *That now the King had no* Power, *but what they ſhould give him, and how he* (who had continued to the laſt obſtinate) *would uſe that* Power, *did plainly appear by his Declaration, after the taking of* Briſtol; *and therefore their Reſolutions about Receiving him, were, for the preſent, ſuſpended.*

SECT. CXIII.

BUT ſuch is the *Viciſſitude* of human Affairs That ſo ſhort a Time as 15 Months, ending in *July* 1647. Diſcovered, That this *immoderate Obſtinacy* in the victorious Parliament, was an *Error*, that not only Rooted up the very *Being* of this Parliament, but brought on the King the *Evils* of Impriſonment, and a violent Death, inſomuch that the Original Deſigns of both Sides Ended, for the preſent, in Diſappointment, and the whole Conſtitution was covered with Confuſion.

The Manner of it was thus;

The Buſineſs of War changed, at this Time, into Conſultations for Peace; For all the King's Armies being ſubdued, and all his Garriſons reduced, the next Conſideration that came under Debate in Parliament, was, how to leſſen the National Charge,

Charge, and eaſe the Country of Military Quarters, by Diſbanding ſome Troops of their Army, and ſending others to *Ireland*, which they made no Doubt ſpeedily to reduce, and they Declared, *That then, they would* Disband *all Armies, that the Kingdom might be Governed, by the known Laws.*

But this Temper in the Houſes, raiſed another Spirit in the Army, which did not like, that the Parliament ſhould ſo Abſolutely diſpoſe of **Them**, by whom they had gotten Power to Effect all the Great Atchievements they had done; and therefore, at this Time, being in the End of the Year 1646, and the Beginning of the Year 1647, a **Scene** was opened, repreſenting the Manner how the Army, in a moſt Wicked and Nefarious Manner, Inſulted the Parliament, by whom they were Raiſed, and Paid, and *Truſted* with Arms; and how they *Wreſted* from their Maſters all their Power.

The Story of theſe Proceedings will ſhew, what was done by the Parliament, who Imagined, they had the Authority; and by the Army, who knew they had the Power; which takes up the Space of about Five Months, from about the Middle of *March* 1646-7, 'till the End of *July*, 1647.

The Army therefore framed a Petition to General *Fairfax*, intending, that he ſhould lay it before the Parliament, wherein they Stated their own Merits, and Repreſented thoſe Inconveniencies, that would befall moſt of them, after *Disbanding*, and called the Deſign to *Disband*, a Plot for Deſtruction of the Army, Attributing the ſame to ſome Men, who (they ſaid) had Taſted of Sovereignty, and being lifted up above the ordinary Sphere of Servants, had endeavoured to become Maſters; and the Army threat'ned, that ſuch Officers, or Soldiers, as would not Subſcribe the *Petition*, ſhould be Caſhier'd.

The Parliament, on the 27th of *March*, 1647, Voted, *That the Petition tended to Create Diſtempers in the Army, To Impoſe Conditions on the Parliament, and the Promoters of it, to be Enemies to the State*; But the Heat of the Army increaſed, during all the Month of *April*, 1647, inſomuch that the Army muttered, *That they knew how to make themſelves as conſiderable as the Parliament, and where to have their Services better Valued, and more liberally Rewarded.*

During

During *April* 1647, the Parliament, and the Army, Temporized the one with the other, and each Side was Jealous, leſt the other ſhould Join the King, and his Friends; however, the Army got the Start, and took the King's Perſon into their Poſſeſſion.

But in *May* 1647, the Parliament Exerted themſelves, and Voted, *That ſuch Part of the Army as would not Subſcribe into the Service for* Ireland, *ſhould be* Disbanded: And ſome Days after that, they Voted, *That the Army ſhould be Divided, and each Regiment ſhould be, at a different Place, Paid off, and* Disbanded, *and that the Train of Artillery, ſhould be ſent up to the Tower of* London.

But, alas! the Army deſpiſed theſe Votes, and entered into an *Engagement*, not to be *Divided*, nor *Disbanded*; they declared, *The Parliament's Rewards to be Mean, and the Supply Slender, that was to carry them Home*; *That the Promoters of* Disbanding, *were their Enemies*; *That they would not have their Enemies to be their* Judges; *That the Houſe of Commons ought to be Purged, and a Period put to their Sitting.*

The Parliament, however, attempted ſome Acts of Power, by Raiſing ſome Horſe, and other Forces, and Impriſoning ſome Officers of the Army, and by offering a Reward to ſuch of the Forces, as would come off, and leave the Army.

But the Army Raged, and ordered a general Rendezvous near St. *Edmonds-Bury*, and then Marched to *Royſton*, and from thence to St. *Alban's*, and ſent up Officers, with an **Impeachment** againſt Eleven Leading Members, and cauſed them to Abſent from the Parliament; They Marched from St. *Alban's*, to *Barkhamſtead*, and from thence to *Uxbridge*, and after that, to *Hounſlow-Heath*, and from thence to *London*, which ſo *Terrified* the Parliament, that they, like Men under Command, and whoſe Freedom was Wreſted from them, Recalled their Declarations againſt the Army, and cauſed them even to be Razed from off the Face of their Journals; they Voted the Army to be *their Army*, and that they would Pay them; and even thanked the General, for ſetting a Guard on the Two Houſes of Parliament, leaving it to him, to proportion the Strength of that Guard, as he thought fit; and ſoon after,

after, a Party of the Army ſeized Forty-one Members, in their Paſſage to the Houſe, andImpriſoned them as Enemies, for promoting the *Disbanding*, who were afterwards called, *the Secluded Members*. After which Violation of Obedience, the Parliament was not to be looked on, in any other View, than as a Committee of Subalterns, to Vote and Act as their Military Maſters directed.

The Civil *Power* being, by theſe perfidious Proceedings, as ſuddenly, as unexpectedly, Confounded and *Diſſolved*, the future Proceedings of the Military Men, cannot be more pathetically Expreſſed, than they are Recounted in the Preamble, or Recital of the Statute of 12 *Car.* II. *cap.* 30.

From this Period, may be dated a new *Æra* of Government, quite unlike this Conſtitution; for the Military Men, and their Adherents, for about Thirteen Years, Ruled by the ſame Arbitrary Power, which they had (as they alledged) taken up Arms to Suppreſs.

This New Government being a Stranger to the Conſtitution, and a mere **Uſurpation**, Supported only by Standing Forces, is therefore paſſed over without further Notice.

SECT. CXIV.

THE firſt Motions which the Principles of the Conſtitution made upon the Face of theſe Confuſions, was in the Year 1659, when we may preſume, that the *Genius* of the Parliament-Party, and the *Genius* of the Royal Party, met in the Shades, and there Moaned, and made Complaints to each other, after this Manner;

Parliament Party. *Ours, and Your Misfortunes, Gentlemen, are Equal, but the Reaſons very different; for when King* Charles *had, between* November 1640, *and* Auguſt 1641, *Complied with his Parliament, and Redreſſed many Grievances, and all Things tended to a peaceable and happy Government, Why did his Majeſty take a Journey to* Scotland, *for no other Purpoſe, than to rip up old Sores, that were, in a manner, healed, and to pick up Materials for new Quarrels? Why would he carry on his Reſentments, againſt the Inviters of the* Scots

Invaſion, in ſuch an Irreconcileable Manner, as to chooſe rather to Violate the Privileges of Parliament, and Enter into a War, than be Diſappointed in his Puniſhment of Men ſo Active, and of ſuch Extraordinary Qualifications? For to this Reſolute and Tenacious Temper of the King, is owing all his, and our Misfortunes; in Regard the diſmal Apprehenſions of Revenge, Redoubled the Parliament's Vigour in their own Defence; It is true that we our ſelves, though Victorious, fell under the Power of our own Military Servants, into whoſe Hands we Put, and Intruſted our Arms, and by them were Stripped of all our Power and Privileges, and became as Unhappy as you, whom we Beat down and Overcame; but that was our Misfortune, and not our Fault: Let us therefore Enter into Meaſures to Reſtore ourſelves, and the Regal Government; for which Purpoſe, we propoſe, That the Firſt, and moſt Effectual Step for that End, that can be taken, will be to Clamour and Contend for a Free Parliament, becauſe the Want of that, brought Ruin on King Charles, *and the ſame Cauſe will produce the ſame Effect, and Ruin the ſame Arbitrary Powers, by whom we are now Oppreſſed.*

But a Grand Difficulty will be, where to place the Wrong, and who muſt be Accounted and Treated as the Wrong Doers; becauſe the Lords and Commons will never endure, that the Two Houſes of Parliament, or the Members in General, ſhall ever be Charged, or Treated as Rebels and Traytors, or that any Matters ſhould be made Uſe of, to the Prejudice or Reproach of their Reputations; and that they would the rather Inſiſt on ſuch Terms, becauſe all the Riches and Power that was left, remained in the Parliament Party, and in the Army, that had Fought againſt the King's Forces, without whoſe Concurrence, King Charles II. *could never hope to be Reſtored.*

Royal Party. *Whatever might be the King's Miſtakes in Government, and however obſtinately he purſued thoſe* Miſtakes, *yet the Parliament's Efforts againſt him, were moſt Violent and Outragious; They Beat and Purſued his Armies, Beſieged, and Took his Towns and Garriſons, brought his Perſon under the Power of the Military Men, who were Ambitious and Unreaſonable, and who, in a moſt Amazing and Publick Manner, Murdered him, and Exil'd his Family; and therefore King* Charles II. *(if he were Reſtored) could never Sit eaſy on the Throne, if thoſe Military Men, who laid Violent Hands*

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on the Royal Perſon of the King his Father, and Spilt his Blood, ſhould be Spared, and not Treated as Traytors.

Parliament Party, *Thoſe Military Gentlemen, and their Adherents, who, in Breach of their Truſt, Aſſaulted their Maſters, and turned them out of Doors, deſerve as much to be puniſhed for thoſe Crimes, as for any other they committed, and to the Puniſhments they deſerve, we leave and yield them up.*

Whilſt theſe Murmurs paſſed between the Ouſted Parties, The Genius of a Venerable and Antient Patriot, who grieved for them both, and had over-heard their Complaints, drew near, and propoſed to them his Sentiments, *viz. That ſince both Parties were equally Trampled upon and Oppreſſed, by a ſmall Parcel of Armed Uſurpers, they ought to join in their Efforts to reſtore the Antient Government, by the three Eſtates of King, Lords, and Commons.* He Reaſoned, *That it was Prepoſterous to Debate about the Ways and Means of a Reſtoration without firſt ſettling the Manner and Form of it, when it ſhould be Effected.*

He therefore proceeded to propoſe, *That if a Scheme or Terms of a Reſtoration were fixed and ſettled in Manner following, it would ſubſiſt upon an equal Foot, and might Content both Parties,* viz.

I. *That it ſhould be Admitted generally, That there had been in the Nation, Wars and Hoſtilities, without Saying who were the Aggreſſors or Cauſers of them.*

II. *That all Treaſons, Offences and Crimes committed, by Virtue or Colour of any Command, Power, Authority, Commiſſion, Warrant or Inſtructions from, or Derived from the late King* Charles I. *ſhould be Pardoned, and put in utter Oblivion.*

III. *That all Treaſons, Offences and Crimes committed, by Virtue or Colour of any Authority Derived from both Houſes, or either Houſe of Parliament, ſhould be Pardoned and put in utter Oblivion.*

IV. *That no Crime committed by either Party ſhould riſe in Judgment, or be brought in Queſtion, againſt any Man on either*

either Side or his Posterity to the least Endamagement of them, even so much as in their Reputations, by any Reproach or Term of Distinction.

V. *That nevertheless the undutiful Military Gentlemen, and their Adherents, who, from Servants, had Assumed to be Masters, and had brought the King to the Scaffold, whom both Parties had equally Complained of and given up, should be left to be Questioned, and Treated, and Punished as Traytors, according to the Enormity of their Offences, and that the Commencement of their Treasons should go no further back, than from the Time they first laid violent Hands upon the King's Person, and Imprisoned him, and took off his Head.*

These were the Terms which this worthy Patriot proposed to be the *Basis* and Plan of the Restoration, and both Parties unanimously Embraced and Resolved to proceed upon those Foundations.

At this Time, a great Captain (*Monk*) amongst the Military Gentlemen, who happened to be in remote Parts (*Scotland*) when the King's Person was Maltreated, being informed of these Debates and Resolutions, and Approving of them, he entred into Measures with both Parties to compass the End aimed at, and by their Directions he Determined to build upon the Foundation of procuring a **Free Parliament**; rightly Judging, That without that Ingredient, all other Methods would end in Vapour and Disappointment.

It is justly to be Remembered, That a young Gentleman, Sir *John Granville*, afterwards Earl of *Bath*, a Kinsman of *Monk*, was really Intitled to a great Share in framing the Contrivance; for he being Intrusted and Instructed by the King in Exile, Artificially Infused into the Valiant, but Reserved Captain, the Glory and Merit of the Design, and thereby Engaged him in Resolutions to attempt that Grand Enterprize.

The Parliament-Party secretly contributed their utmost, in forming Schemes and Directions to instruct and guide this great Captain, and he, on his Part, pursued those Instructions, secured and brought over a Part of the Parliament-Army, and by those Means, a Free Parliament was obtained; whereupon King *Charles* II. (then in Exile) Accepted of and Agreed to those Terms

Terms before Specified; and ſignified the ſame by Letters to both Houſes of Parliament; which Methods facilitated and accelerated, without Bloodſhed, the Reſtoration, *viz.* Of the three Eſtates of King, Lords, and Commons; immediately after which, the Terms, or Scheme of it, which had been before ſtipulated, were Eſtabliſhed and Paſſed into that famous Law made by the Reſtored King, and by the Reſtored Free Parliament, Intitled, *An Act of Free and General Pardon, Indemnity, and Oblivion*, 12 Car. II. cap. 11. *Whereby*, To the Intent that no Crime whatſoever, committted againſt this King, or his Royal Father King *Charles* the Firſt, or againſt the *Two Eſtates of Lords and Commons*, ſhould ever after riſe in Judgment, or be brought in Queſtion againſt any Offenders to the leaſt Endamagement of them, Either in their Lives or Eſtates or to the Prejudice of their Reputations by any Reproach or Term of Diſtinction, and to bury all Seeds of Remembrance of any ſuch Crimes; and, in Performance of this King's Royal Word, ſignified by his Letters to both Houſes of Parliament, and of his Declarations in that Behalf publiſhed, **It was Enacted**, *That all Treaſons, Offences, and Crimes Counſelled, Commanded, Acted or Done, by Virtue or Colour of any Command, Power, Authority, Commiſſion, Warrant, or Inſtructions from, or Derived mediately, or immediately from the late King* Charles I. *or from his now Majeſty; or by Virtue or Colour of any Authority, Derived mediately, or immediately of, or from both Houſes, or either Houſe of Parliament, ſhould be Pardoned, Releaſed, Diſcharged, and put in utter Oblivion, except as therein.*

And in other Acts paſſed about that Time, was mentioned and provided, whereby the **Invitation** of the *Scots* Invaſion, ſtands Cleared and Juſtified, and the Military Gentlemen only, and their Adherents, were Queſtioned, and Treated, and Puniſhed as Traytors; and yet even theſe Military Mens Treaſons were Confined and Reſtrained to what they immediately acted upon, and againſt the King's Perſon, in Relation to his Impriſonment, and the Taking away his Life, after his Forces were Subdued and Vanquiſhed.

SECT. CXV.

FROM theſe Proceedings, it is Apparent, That there was, at the Reſtoration, more Care taken of the Conſtitution, than is commonly Apprehended; for by the Act of Oblivion, it ſtands by the Royal Aſſent of King *Charles* II. Proved and Declared upon Record to all the World, That thoſe of the Royal Party, who, by Authority Derived from King *Charles* I. fought againſt the Parliament and their Forces, were as much guilty, of high Crimes, and ſtood in as much Need of Pardon, as thoſe of the Parliament Party, who, by Authority Derived from the two Eſtates of Lords and Commons, fought in Defence, of what they called, the Fundamental Form of this Government, and their Hereditary Privileges and Liberties againſt the King's Forces.

And yet if People, who being Children at the Reſtoration, or born afterwards, are to form their Judgments, from the bitter Invectives in Sermons and Pamphlets, they muſt conclude, That the Parliament Party were the blackeſt of Rebels, and worſt of Enemies, and the Royal Party the Brighteſt Patriots, and beſt of Friends, to the Conſtitution, and to the Laws and Hereditary Freedom and Privileges of *Britain*; than which nothing can be more Erroneous, if what is before written be True.

The Scheme therefore, which was the Baſis of the Reſtoration, Demonſtrates, how Injurious ſomebody has been, in affixing to the Lord *Clarendon*'s Hiſtory of theſe Affairs, the Title of *The Grand Rebellion*, and in Dating the Commencement of it, to be in the Year 1641. For that, in ſo doing, are violated the very Condition and Seals of the Reſtoration; becauſe his Maſter, for a Valuable Conſideration, *viz.* for his Reſtitution to the Regal Dignity and Government, had ſolemnly contracted and engaged, That the two Eſtates of Lords and Commons, or thoſe who acted by their Orders, or their Families (except as before) ſhould never be Endamaged or Prejudiced in their Reputation, by any Reproach or Term of Diſtinction; without which Stipulation, King *Charles* II. had not been Reſtored, nor the Hiſtorian ſo greatly Advanced, Enriched and Dignified; and therefore it may, with great Juſtice, be Repeated, That this

Hiſtorian

Hiſtorian (who knew all this) if it was really him that Affixed that Title, was Injurious, or, at leaſt, Inconſiſtent with himſelf; For the *Oxford* Preface to his Hiſtory, Aſſerts, with great Truth, *That his Lordſhip, at the Reſtoration, in the Year 1660. had the Happineſs to have the greateſt Share in Preſerving the Conſtitution, and the Original Form of this Government, Entire, when the preſent Temper of that new Parliament was but too ready to have gone into any Manner of Undue* (i. e. Slaviſh) *Compliances*; But above all, *That his Lordſhip had the Happineſs to have the greateſt Share in Compoſing and Perfecting the Act of Oblivion and Indemnity; which had placed the King's Officers and his Forces, in point of Offences againſt the Conſtitution, on an equal Foot with the Parliament Officers and their Forces*; and, doubtleſs, this Aſſertion is equally true with the other undoubted *Britiſh* Aſſertions in that venerable Preface before Remembred.

And that which adds to the Glory of this Great Man, is, That after his Removal, we ſhall ſee in the two next Reigns, the Deforming Principles of Arbitrary Power; as ſoon as they Recovered Warmth, not only Corroding the Vitals, but Labouring to cut up the Roots of this Conſtitution.

BREACHES IN THE REIGN OF KING CHARLES II.

CHAP. X.

SECT. I.

IN the Reign of this King, the Breaches of the Conſtitution were not Inferior, or leſs Dangerous, than thoſe of any of his Predeceſſors; but his Felicity in making them, was ſuperior to any that ever went before him; for he ſo prevailed at laſt, that his Majeſty Triumphed, and the People Rejoiced; the one in fancying himſelf Abſolute, and the other, in believing their Abſolute Maſter was pleaſed, although that Pleaſure of the People, was built upon their own Inſecurity.

The

The Contentions which Aroſe between this King, and his Parliaments, concerned the Grand **Defence** of the Nation, againſt the Growth and Power of *France*, and the **Defence** of the Proteſtant Religion, againſt the Growth, and near Approach of Popery.

The Proceedings are difficult to be repreſented, and makes it neceſſary to State the Steps, which led to this King's ſurprizing **Succeſſes**, in Evading the Parliamentary Proviſions, which were neceſſary to make thoſe **Defences**, in Relation both to the Church and State.

There can be no Occaſion to Paint the Forlorn Difficulties, Diſtreſſes, and Deſpondencies, under which this King, in his Exile for Twelve Years, Laboured and Suffered, becauſe they are univerſally known; thoſe *Tranſactions* which happened in the Progreſs to his Reſtoration, only, are material to be Remembred.

When the good Time came, that the People Inclined to Receive this King, and Reſtore him to the Government, his Majeſty was at *Breda*, in *Holland*.

From *Breda*, the King ſent a Letter to *Monk*, the then General of the *Engliſh* Army, to be communicated to the State, wherein his Majeſty aſſured them, **upon his Royal Word**, *That he had the greateſt Eſteem for* Parliaments, *believing them to be a Vital Part of the Conſtitution.* Echard 761.

His Majeſty, by his general Declaration from *Breda*, to all *Britons*, declared, *That he equally deſired the* **People** *might Enjoy what, by Law, was theirs, as that he himſelf might Enjoy what, by Law, was* his; *and that his* **Ultimate** *was, That there might be a Reſtoration of the King, Lords, and Commons, to their Antient and* Fundamental *Liberties and Privileges, and a Reſettlement of his, and their, Juſt Rights, in Free Parliaments*; and promiſed, **on the Word of a King**, *That he would always be* Adviſed *by his Parliaments.*

In Anſwer to that Declaration, the Lords and Commons, being Aſſembled in a Free Convention, Joined in a Vote, declaring, *That by the Antient and Fundamental Laws, the Go-*

vernment of England *was, and ought to be, by* King, Lords, *and* Commons; and ſent it to the King at *Breda*; with which Vote, or Declaration, his Majeſty readily, and without Heſitation, Agreed and Concurred.

The Reſtoration therefore, proceeded upon theſe Reciprocal Declarations, by which a State-Contract, between them, was Compoſed and Compleated; and no one could have imagined, That ſuch a King would ever have *Deviated* from the Conſtitution, or have **Meditated Means**, to make himſelf Abſolute Maſter over his Parliaments (i. e. To Enſlave the Parliament) or to Subvert the Government, or to Avoid being **Adviſed** by Free Parliaments.

SECT. II.

AFTER this Ground-Work was laid, theſe Three Circumſtances attended the whole Structure, *viz.*

I. *That this King was, unknown to the Lords and Commons, a private Papiſt.*

This Fact, his Brother and Succeſſor, King *James* II. took Care to Publiſh, Exhibiting to the World, Inconteſtible Evidences to Evince the Truth of it.

II. *That there was in* France, *at this Time, an aſpiring young King* (*Lewis* the XIV.) *whoſe Power by Sea and Land, was ſuddenly Grown and Increaſed to a Superiority over any Neighbouring Potentate, his Underſtanding, Capacity, and Warlike Inclinations, led him to Form* Schemes, *for making* France *the Seat of* Univerſal Monarchy, *inſomuch, that he was become the Terror of* Europe.

III. *That the Power of* Britain, *was, at that Time, Sufficient, and Able, in Conjunction with* Holland, *and other Allies, to Remove the Danger, and to Reduce and Bridle the Imperious Power of that Ambitious Monarch.*

Theſe Circumſtances, ought therefore to be kept in View, throughout this King's whole Adminiſtration.

The

The Facts in King *Charles*'s Reign, which may be ſuppoſed to be Breaches of the Conſtitution, were theſe;

I. *The Secret* **League** *made between this King and* France, *whereby King* Lewis *the* XIV*th Engaged to Aſſiſt King* Charles, *to make him* Abſolute Maſter *of his Parliaments*; *or, in other Words, To Acquire an Abſolute Power or Authority over his Parliaments*; *And, moreover, to Introduce and Eſtabliſh Popery in his Three Kingdoms of* England, Scotland, *and* Ireland.

II. *This King's aſſuming an Authority over his Parliaments, to Exclude and Deny them the Right or Power to* **Adviſe**, *or Intermeddle, in making War, or Peace, or Alliances to Support either Peace or War, in order to Defend the Nation againſt the Formidable Power of* France, *and eſpecially to Exclude them from Naming the Perſons, with whom ſuch Alliances were to be made, or to Name, or Point out, the Ends or Purpoſes, for which ſuch Alliances and Wars, ought to be Engaged in.*

III. *This King's Exerciſing an unlimited Power over Parliaments, by* Diſmiſſing *their Sitting, and Diſſipating their Councils, whenever they took into Conſideration, the* **State** *of the Nation, the Terrors of* France, *or the Dangers of Popery, although it were to Provide neceſſary* **Defences** *againſt them.*

IV. *His Violation and Breach of the Grand Alliance, called the* Triple Alliance, *which had been accidentally made, and became a ſtrong and ſure Barrier againſt* France.

V. *His Aſſuming a Diſpenſing Power to Suſpend and Vary, by his Regal Authority only, the Laws made againſt Proteſtant Diſſenters.*

VI. *His Attempt on the Legiſlature, by Sending out Writs to make Elections of Members of the Houſe of Commons, to Supply the Room of ſuch as Died in the Intervals of Parliament.*

VII. *His Giving and Sealing a Pardon to the Earl of* Danby, *for Offences Tending to Subvert the Conſtitution, and Hurt the Nation.*

VIII. *His*

VIII. *His Violating the Right of Petitioning to Redreſs Grievances, and the Right of Shewing, in thoſe Petitions, the Cauſes of thoſe Grievances.*

IX. *His Attempt on the Eſſence of the Legiſlature, by Proſecuting* Quo Warranto's, *againſt Cities and Boroughs, who ſent Members to Serve in Parliament, in order to acquire a Power over the Returning Officers, and by that Means, the Nomination of the Members.*

X. *By Diſabling Parliaments, to make Proviſions to Exclude Popery.*

SECT. VIII.

As to the Secret League with *France*, and the End for which King *Charles* Entered into it;

This Fact was Diſcovered by the Publication of Sir *William Temple*'s Letters, after his Death, by Dr. *Jonathan Swift*, who Teſtifies, *That he had that Information from the Author himſelf; That the Diſcovery happened to fall from the King's own Mouth, when an accidental Paſſion had rendered him Unguarded*: And it's probable, that this Private Alliance was concluded by the Queen-Mother, with the Aſſiſtance of Monſieur *Colbert*, who ſucceeded as Prime Miniſter in *France*, after Cardinal *Mazarine*'s Death: However, this Fact was more clearly Related in a Book, or Hiſtory, written by the Abbot *de Primi*, an Agent of Monſieur *Colbert*'s, and Printed, by Authority, at *Paris*, in the Year 1682; but the Book was, upon the Complaint of Lord *Preſton*, the *Engliſh* Embaſſador, Suppreſſed, and the Abbot ſent to the *Baſtile*, and Impriſoned only for Ten Days, to Quiet that Clamour.

The Conſequences of this Fatal Conſpiracy, do naturally ſhew;

I. That the King (who Abandoned himſelf to Pleaſures) Delegated his Government into the Hands of his Brother the Duke of *York*, who was not only a Papiſt of great Zeal, but Active and Enterprizing in the State-Councils.

II. That

II. That the Duke of *York* had a ſecret Cabal of Prieſts, and Popiſh Counſellors, formed for him, to Guide (and who did Guide) him, and King *Charles*, in all the great Councils and Affairs of the State.

III. That in Regard the Power of *France* was to Aſſiſt in making King *Charles* Abſolute Maſter of his Parliaments, it was but reaſonable, King *Charles* ſhould Aſſiſt in Raiſing that Power, to make it ſufficient; And that the *French* King, by thoſe Means, gained the Power of *England*, to lift higher the Grandeur of his Atchievements.

IV. That ſince the **Ultimate** was to make King *Charles* Abſolute Maſter of his Parliaments, the Popiſh Cabal rightly Judged, That the Proteſtant States of *Holland*, and the Diſſenting Proteſtants at Home, would appear Diſinclined, and would, if they could, **Diſturb** the Progreſs to that Acquiſition; and that it was therefore equally reaſonable, That King *Charles* ſhould Co-operate with *France*, in beating down Abroad, the States of *Holland*, and at Home, the Power of the Diſſenters, who were inflexible Enemies to *France* and Popery; in order to which, that Party was ſtigmatized, with the Character of *The Factious*, and the contrary Party, favouring the *French* Intereſt, were graced with the good Name of *The Loyal*, although, after ſome Time, the former acquired the Name of *The Country*, and the latter the Name of *The Court-Party*.

V. That although King *Charles* II. had been charged, as if he had been unſteady and changeable, yet if a Tree is to be known by its Fruits, this King was eminently ſteady, and never Deviated from his ſecret League with *France*; for altho' he ſometimes treated with the *Dutch*, as if he were an Enemy to *France*, yet from the Events, it may be concluded, That all his Treaties with the States, were tranſacted in Concert with *Lewis* XIV. and under a ſecret Aſſurance, That the ſame ſhould never hurt, but rather promote the *French* Intereſt.

VI. That ſince this private League was Levell'd at Subverting this Conſtitution, it becomes neceſſary, to take more of the Hiſtory into the Deſcription, than was Intended.

SECT. IV.

THESE Concluſions will evidently appear, from a Repertory of this King's Adminiſtration, in Conjunction with a Giving and moſt Complying Parliament. The firſt Step which the Secret *League* required, and which was Embraced by the Popiſh Cabal, with Alacrity, was to weaken the Proteſtant Power at Home, by fettering them with perplexing Oaths, whereby they, as was intended, ſhould not only declare, but ſwear away their Liberties; which was done by the *Militia* Act, whereby a Declaration was made, That both, or either Houſes of Parliament could not, nor lawfully might, raiſe or levy War, to Defend themſelves againſt the King; and an Oath was Impoſed to be taken by all Officers and Soldiers in this Form, *viz. I Declare and Believe, That it is not Lawful, upon any Pretence whatſoever, to take up Arms againſt the King; and that I do abhor that Traiterous Poſition, That Arms may be taken, by his Authority, againſt his Perſon, or againſt thoſe* Commiſſioned *by him.*

Theſe Words were comprehenſive enough, not only to Surrender or Diſclaim the Conſtitution, and the Liberties of *Britain*, but to make the King abſolute, if Oaths and Declarations could make him, ſo; for the People had Delivered themſelves up, bound Hand and Foot (as the Popiſh Cabal Apprehended).

EACHARD. BURNET. But the Paſſage of this Act, met with ſome Interruption; for Sir *John Vaughan*, a *Welſh* Gentleman, afterwards Lord Chief Juſtice of the Common-Pleas, moved to add the Word [*Lawfully*] to the Words *Commiſſioned by him*, to the end the Common People might better underſtand the Extent of the Oath.

But the great Sir *Heneage Finch*, Attorney-General, afterwards Lord High Chancellor of *England*, oppoſed the Motion, Arguing, *That the Word* [Lawfully] *would be ſuperfluous; becauſe it was tacitly implied; for if the Commiſſion was not Lawful, it was no Commiſſion.*

But

But then a Queſtion was Demanded, both of the Mover and Anſwerer, *How Commiſſions ſhould be Diſtinguiſhed by the Common People, Which was a Lawful, and Which was an Unlawful Commiſſion?*

To which it was Anſwered, *That was the Plaineſt and Eaſieſt Thing in the World; becauſe the Commiſſion was to be Judged of, by the Thing Commiſſioned to be done, whether that were Lawful or not; for the King could not Commiſſion any Man to* Break *the Laws, which every Man is ſuppoſed to know; and, therefore, if the Things Commiſſioned to be done, were unlawful to be done, then the Commiſſion was* Unlawful *and Void, and the Commiſſioners might be Diſobeyed and* Diſturbed.

This Sort of Reaſoning (being Juſt) prevailed in both Houſes, and the Word *Lawfully* was omitted, it being agreed, *That the Law was the ſureſt Rule, by which the* Legality *and* Illegality *of all the Acts and Proceedings in the Adminiſtration of Government, might be Meaſured and Diſtinguiſhed.*

The Reſult was, *That whatſoever was* Unlawful *was* not *comprized in the Oath*; for the Oath would have been inconſiſtent, if it had been to ſwear not to oppoſe Unlawful Actions, becauſe that would Authorize the doing them, and would *ſubvert* all our Laws at one Breath.

SECT. V.

THE next Product of the ſecret League, was, a Declaration of War, made the 22d of *February* 1664. againſt the *Dutch*, in Order to beat down that Proteſtant Power: The Pretences were, *To Recover Satisfaction for the Wrongs in Trade which the* Engliſh *had ſuffered.*

But the Circumſtances which Attended this War, Demonſtrated the ſecret Meaning to be, for Carrying on the ſecret Intereſt, *To make the King Abſolute Maſter of his Parliaments*; for no Party of People were ſo Zealous in promoting it, as the Papiſts; the Queen-Mother, and the Queen-Conſort did both eminently manifeſt their Zeal, by Commanding all their Domeſticks,

meſticks, to ſet themſelves apart, with intire Abſtinence, and Extraordinary Devotions, on the Faſt Day that was, for that Purpoſe Appointed.

The Duke of *York*'s Zeal for Compaſſing the grand Deſign, puſh'd him on to be Admiral, and to enter into the firſt Sea-Fight, where a Cannon Ball took off three Gentlemen ſtanding next him, ſprinkling on the Duke himſelf, their Blood: The Duke, however, was Victorious; but the Fatigue of the Day brought on him, at Night, a deep Sleep, which cauſed the Sails to be ſlackened, and that Neglect gave the Beaten *Dutch* Fleet, an Opportunity to *Eſcape*; and that *Eſcape* broke all King *Charles*'s Schemes, and the Advantage then loſt could never be Retrieved.

This War continued from the 24th of *February* 1664. 'till the 14th of *Auguſt* 1667. being near two Years and an half, during which Time, the eaſy Parliament, gave immenſe Sums without Inquiring, either into the true Purpoſes for which they were given; nor how, or in what Manner, the Monies were Employed or Diſpoſed.

But the Proteſtant Diſſenters, ſhewing a manifeſt *Diſinclination* to the War, were, by the Inſtigation of the Popiſh Cabal, puniſhed by an Act of Parliament, called, *The Five-Mile-Act*, whereby their Preachers were Baniſhed five Miles from every Corporation, unleſs they would take the ſame Oath, as was impoſed in the *Militia* Act, with this Addition, That they ſhould ſwear, *They would not* Endeavour *any Alteration of this Government, either in Church or State.*

However, the Cannon-Ball, before mentioned, Deterred the Duke of *York* from Adventuring any more on Board the Fleet.

The Second Battle happened on the 1ſt of *June* 1667. when the whole *Dutch* Fleet, between *Dunkirk* and *England*, Engaged one half of the *Engliſh* Navy, commanded by Admiral *Monk*; the Fight continued four Days, wherein the *Engliſh* Fleet, being over-powered with Numbers, was juſt upon the Point of utter Deſtruction, when Prince *Rupert*, with the reſt of the Fleet, came ſeaſonably in, on the 4th Day of Battle, and Reſcued the *Engliſh*, from the Jaws of Deſtruction.

The

The War with the *Dutch*, from this Time, Languiſhed, for the Parliament, after having given above five Millions to carry it on, Cooled, and the Diſſipation of vaſt Sums of Money, Diſabled the King to ſet out a Fleet, in the next Summer 1667. inſomuch that the *Dutch*, in *May* and *June* 1677. Braved us, and rode Triumphant in the very Mouth of the *Thames*, called *Tilbury-Hope*, and from thence went up the *Medway*, and burnt many *Britiſh* Men of War, in the very Harbour of *Chatham*.

Theſe Diſaſters created a Suſpicion, and rais'd Clamours at the King's ſecret Meaſures with *France*, inſomuch that King *Charles* loſt all Confidence with his People, and thereupon a Peace was made with the *Dutch*, on the 14th of *Auguſt* 1677. at their own Town of *Breda*.

SECT. VI.

AT this Time, *viz.* in the Beginning of the Year 1667. the *French* King had attained the Age of about 29, and had ſet up a Title to the *Spaniſh Netherlands*, under this groſs Pretence, *That by the Laws of* Brabant, *a Daughter by the Firſt Wife, ſhould Inherit before the Son of a Second Wife, and that his* [the *French*] *Queen, being the Daughter of the late King of* Spain, *by his Firſt Wife, ought to Inherit the* Spaniſh Netherlands, *preferable to the then King of* Spain, *who was Son by the Second Wife*; And, under that Pretence, he poured into *Flanders* a great Army, and took ten or twelve ſtrong Towns by Surprize, and then marched his Army into *Franch-Comte*, and took Poſſeſſion of it and *Burgundy*.

This Growth and Advance of the *French* Power, Alarmed not only *Germany* and the *Dutch*, but even the People of *England*; inſomuch that King *Charles*, about *Chriſtmas* 1667. in order to recover Credit and Confidence with his People, and to incline them to give him Money, ſent over Sir *William Temple* to *Holland*, to make a Defenſive Alliance with the *Dutch* againſt *France*, ſo as to reſtrain that Crown from further Invaſions, and to invite into it all the *European* Potentates; and Sir *William Temple* Digeſted the Alliance ſo Judiciouſly, and Sollicited it ſo Induſtriouſly, that in five Days time, *viz.* the 23d Day of *January* 1667. the Treaty was Concluded and Signed, between

England and *Holland*, and ſoon after, *Sweden* Entred into it as a Principal, which cauſed it to be Called the **Triple Alliance.**

This Triple Alliance was a Baſis for the Defence of *Britain*, ſo wiſely Adjuſted, that moſt of the Potentates in *Europe*, *viz.* the Emperor, *Spain*, *Denmark*, *Brandenburgh*, *Lorrain*, *Lunenburgh*, *&c.* came into it, as a Shelter to ſave themſelves from the *French* Violence.

This *Triple Alliance* was Eſteemed an Impregnable Frontier againſt *France*, and a Grand Performance of the Author, Sir *William Temple*, who gained Applauſe Univerſally (except with his own Maſter, and the Duke of *York*).

In this Place, it may be obſerved, That if ſecret Meanings are Indicated by outward Appearances, then this *Triple Alliance* was founded in Deceit and Inſincerity; for Monſieur *D'Eſtrades*, the *French* Ambaſſador in *Holland*, who was upon the Secret, hearing what mighty Joy this Triple Alliance had cauſed; ſaid, *All would fly into Smoak*: And Sir *Thomas Clifford*, an *Engliſh* Miniſter of State (but a ſecret Papiſt) whiſper'd to his Friend, *Well, for all this Noiſe, we muſt have another War with the* Dutch, *e'er it be long.*

SECT. VII.

UPON the *Triple Alliance* may be obſerved, Firſt, *The Nature and Importance of it*; Secondly, *By whom it was Violated and Broken, and for what Reaſons*; Thirdly, *The Conſequences of that Breach and Violation.*

Burnet, P. 254. Parker, 150, 279.

I. *As to the Importance and Nature of the Triple Alliance*, Biſhop *Burnet* writes, *It was the Maſter-Piece of King* Charles's *Life*; *and if he had ſtuck to it, it had been the Strength and Glory of his Reign.* Biſhop *Parker* writes, *That it ſufficiently Curbed* France, *ſo long as it was obſerved*; for the *French* King was not ſo Mad, as to dare alone, to proclaim War againſt all *Europe*; *That it made the Fate of all* Europe *Depend on King* Charles *alone, and Enabled him to give Peace or War* at his Pleaſure; for as long as he continued it, which was about four Years, computing from the 23d of *January* 1667,

1667, 'till the 17th of *March* 1671, there was Peace and Tranquillity throughout *Europe*: *The Importance and Neceſſity of it Appeared from the Exceſſive Growth of* France; For that King was the moſt Powerful of all the *European* Potentates, and in Strength and Military Valour, not only almoſt, but fully, an equal Match for them all, and was therefore the Terror of *Europe*, and the only Prince to be feared; and for that Reaſon, the Care that was taken by the Triple Alliance, to oppoſe the Meaſures of a Prince ſo Potent and ſo Enterprizing, was moſt Prudent and Important. Parker, 149, 132, 279.

II. *As to the Violation of the Triple Alliance, and by whom it was Broken, and for what Reaſons it was Violated,*

King *Charles* obtained from his Parliament, vaſt Sums, on Pretence of Maintaining that Triple Alliance; and as ſoon as he had Repaired his Fleet, and Repleniſhed his Stores, he Revived the Secret League with *France*, to make himſelf Abſolute Maſter of his Parliaments, and to Shake off the Reſtraint of a Houſe of Commons; for he Abhorred their Inquiring into Applications of the publick Money. Burnet, 272, 300.

SECT. VIII.

THE *Scheme* which King *Charles* propoſed, and ſent to the *French* King, was, *That* France *ſhould Aſſiſt him firſt to Subdue* England, *and Introduce Popery*; *and, after that, the Proteſtant States of* Holland; But *France* ſent the Dutcheſs of *Orleans*, in *May* 1670, to meet her Brother King *Charles*, at *Dover*, with a **Counter-Scheme**, *viz. Firſt to Conquer* Holland *by Invading it with Joint Forces, by Sea and Land, and to make a Partition, Allotting* Zealand, *and the Sea Coaſts, to King* Charles, *and the Inland Countries, to* France; Inſinuating, *That after Succeſs in That, the reſt would be an eaſy Work, and* France *would pay King* Charles 350,000 l. per Annum, *during the War*; and he did pay 700,000 *l.* for the firſt two Years. Parker, 148, 149.

This Counter-Scheme prevailed, and was agreed upon; and the Conqueſt of *Holland* was looked upon as Secure, Eaſy, and Speedy, and the Conſtitution and Form of Government in *England*,

England, was, in Imagination, Subverted, and the Parliament Maſtered.

Parker, 138, 215, 279. Biſhop *Parker* writes, *That the Triple Alliance was* **Baſely Broken**; *That King* Charles *Untied the Knot*; And, *That the Breach was a* Deadly Sin *againſt all the Laws of Nature, and of Nations.*

All Things being ready in *England* and *France*, War was declared againſt the States of *Holland*, on the ſame Day, *viz.* On the 17th of *March*, 1671, both at *London* and *Paris.*

III. *As to the Conſequences of the* **Breach** *of the Triple Alliance*: In Regard the Secret End of that Breach, and of the Alliance with *France*, to Subdue *Holland*, was to make King *Charles* Abſolute Maſter of his Parliament; the pleaſing Acquiſition was in immediate View, by the ſure Conqueſt of *Holland*; It was therefore fit for the King to Exerciſe (and he did Exerciſe) ſome Acts of Arbitrary Power, in order to Inure the People to Bear the Form of his intended New Government, which he Experimented thus;

Echard, 881. Parker, 139. Firſt, *In order to Appeaſe the Diſſenters Clamours, he* **Diſpenſed** *with all the Penal Laws againſt them.*

Secondly, *He* Shut up *the* Exchequer, *and* (to uſe the Biſhop's own Words) *Turn'd it into a Place of Robbery.* And,

Thirdly, *He cauſed Writs to be ſent out, and* **Elections** *made, of Courtiers, to fill up ſuch Places in the Houſe of Commons, as had become Vacant by the Death of Members, in the laſt Interval of Parliament, which* Intermiſſion *had continued One Year and Nine Months.*

Echard. But his Black and Fatal Alliance, was **Secretly** Negociated with the *French* King, who played the *Broker* with King *Charles*, Turning the ſame to his own Advantage, and Smiling, at the ſame Time, at *Britain*'s Infirmities.

King *Charles*, in *April* 1672, ſent 6000 Choice Foot, under the Command of the Duke of *Monmouth*, into *Flanders*, to Join the *French* Army, and Aſſiſt in the intended Conqueſt of *Holland*; which Forces continued in the *French* Service, and Aſſiſted

t

Aſſiſted in Taking all the *Dutch* Frontier Towns, and were Aſſiſting before *Utrecht*, when that Town Surrendered to the *French* King; But, above all, thoſe *Engliſh* Forces did, for that King, Eminent Service, in Aſſaulting and Taking *Maeſtricht*, in *July* 1673.

The Firſt Step which the *French* King made, after the Breach of the Triple Alliance, was the Seizure of *Lorrain*, ſo ſuddenly, that that Heroick Duke Eſcaped with Difficulty, being made a Priſoner; giving this Reaſon for that Violence, *Becauſe the Duke had Entred into the Triple Alliance.*

SECT. IX.

THE *French* King, with a vaſt Army, paſſed, like a Land Flood, down to *Utrecht*, Situated in the Middle of the United Provinces, and that Town being ſurrendered to him in *July* 1672, he kept his Court there, being Maſter of Three of the Seven Provinces; and, at the ſame Time, the *Britiſh* and *French* Fleets were ready, near *Scheveling*, to make a Deſcent on *Holland*.

At this Time, the *Dutch* were at the loweſt Ebb, and their Condition was looked upon, as Irretrievable; but in this Extremity, Providence Interpoſed, and ſaved that Proteſtant People, and with them, the Conſtitution and Liberties of *Britain*, Reſcuing them from under the Immenſe Power of *France*, and of King *Charles*, and *Predeſtinating* that Little Country, to be a Reſervoir of Power, from whence ſhould Iſſue Forces, to overturn all the Arbitrary and Towering Schemes of their mighty Oppreſſors; and for that Purpoſe, the great Diſpoſer of all Events, Altered the very Ebbings and Flowings of the Seas, and ſent a Blaſt, which had near Buried the *Britiſh* and *French* Fleets in the Deep, Driving them, with great Terror, Home to the *Engliſh* Coaſts.

And, moreover, the ſame Over-ruling Power, Infatuated the *French* King, and Cauſed him (for ſome Reaſon, which no Man could ever Account for) to haſten away from *Utrecht*, to *Paris*, and to leave his Conqueſts, and his Army, under the Command of a Cruel and Extravagant General; and yet that

Army was, in a ſhort Time, obliged to March out of *Holland*, with as much Haſte, as it Ruſhed into it.

Salmon, 146. The *Dutch* being in Extremity, and knowing the Parliament, and People of *Britain* (except the Popiſh Cabal) to be their Well-wiſhers, They, on the 21ſt of *July*, 1672, ſent Ambaſſadors to King *Charles*, to beg for Peace; and although they Expected no Succeſs, yet they Judged, their Embaſſy would Alarm and Incenſe the People.

Ibid. This Embaſſy had its Effect; for the People were Inflamed, and ready for a Mutiny, which cauſed the King to ſend Three Embaſſadors to the *French* King at *Utrecht*, to faſten his private League, for fear of a General *Revolt*, in caſe his Subjects ſhould Diſcover his Engagements againſt Them: The King alſo, Raiſed more Land Forces to Secure himſelf, as he thought, againſt his own People.

SECT. X.

THIS Juncture diſcovered, That the Undertaking to Conquer *Holland*, required more Time, than King *Charles* had Calculated; for 700,000 *l.* which the *French* King had furniſhed, and the Booty which King *Charles* had Seized, by Shutting the *Exchequer*, were Laviſhed away, and Conſumed: And the King could not make one Step further in the War, without more Money, which the *French* could not, or would not, ſpare: Neceſſity therefore forced him to Aſſemble the Parliament, after he had Curbed and With-held them from Sitting, during theſe Negotiations, the Space of One Year and Nine Months.

The Parliament met on the 4th of *February*, 1672, and the King told them, in Effect, *That he had Broken the Triple Alliance, and had, in Conjunction with the* French, *made War on the Proteſtant States of* Holland, *before he had Proclaimed it; and that he had done all this, for the Honour of* England, *and therefore demanded Supplies to carry it on*: He took Notice of his **Diſpenſing** with the Penal Laws, to Indulge the Proteſtant Diſſenters, Declaring, *He would take it Ill, to Receive Contradiction, and that he was Reſolved to Stick to, and Maintain, that ſuſpending Declaration*: And as to the Land Forces lately

lately Raiſed, he ſaid, *They were not ſufficient for the Purpoſes he intended, and therefore he would Raiſe more next Spring*; and demanded *Supplies to Defray that Part of his Expences*: The Lord Chancellor *Shaftsbury*, Juſtified the **War**, in a moſt Amazing Speech.

The Complying *Court-Party* in the Houſe of Commons, contented themſelves with complaining of his Majeſty's cauſing the Chancellor to ſend out Writs (without their Order) to *Elect* new Members in the Room of the Deceaſed ones, as being an Attempt on the Eſſence of the Legiſlature: The King, thereupon, left that Matter to the Commons Conſideration, *Abandoning* the Chancellor to their Reſentment: The Houſe, thereupon, *Expelled* thoſe ſpurious Members, and new Ones of the *Country-Party* were choſen in the Room of the Deceaſed.

The Commons Reſolved not to paſs any Money Bill, unleſs the **Diſpenſing** Power were firſt Diſavowed and Diſclaimed. The Arguments *pro & contra* were thus Managed: The King Inſiſted, *That his* Supremacy *gave him Power to* ſuſpend *all Penal Laws in Eccleſiaſtical Matters, but as to the* Laws *in Temporals, relating to the Subjects Properties, Rights and Liberties, he did not pretend, at this Time, to Exerciſe any* **Diſpenſing** *Power over them.*

The Commons Inſiſted, *That the* **Authority** *which made the one, made alſo the other*; *and that if the King had Power to* ſuſpend *the one, he might, by the ſame Reaſon,* ſuſpend *the other, and no Doubt he would ſo do, whenever his Miniſters ſhould tell him he had Forces ſufficient to maintain that Undertaking.*

The King's Counſellors Adviſed his Majeſty to perſiſt in his Reſolution, Urging, *That his Honour was Engaged to maintain, what he had ſo publickly Declared*; but above all, the Duke of *York*'s Argument was the freeſt and plaineſt; for he Urged, *That his Father King* Charles's *Conceſſions, in the Year* 1641, *did but Encourage new Demands, and that therefore this King ought to be ſteady, and Adhere to the Reſolution Declared by his Speech to the Parliament, and the rather, ſince he had Armed Forces on Foot, ſufficient to* Support *his own Party, and to* Intimidate *the other*; *ſome of whom offered Effectually to do what his Father Attempted, but Failed to Effect,* viz. *To*

Take

Take out *of Both Houſes, the* Members *that made the Oppoſition,* Urging, *That the People had Diſcover'd the King's ſecret Deſigns, and that therefore his Majeſty muſt either now reſolve to make himſelf* **Maſter** *at once, or be for ever Subject to Jealouſy and Diſtruſt.*

The Patriots Argued, *That if the King ſhould Violate the Rights and Powers of the Houſe of Commons, by Seizing and Taking out Members, he would* Wound *all the People in the Perſons of their Repreſentatives; That all Tyes and Obligations upon the People would be* Looſed; *That the King's Power over the* Militia *would be* Diſſolved; *That the* Militia *Arms, which are a* Fund *of Security in the Hands of the People, would be powerful enough to Vindicate and* Reſcue *their own Repreſentatives, and in them their own Rights and Liberties, from under Oppreſſion, and to puniſh their Oppreſſors, Becauſe when the King had himſelf Deſtroyed his own Strong Hold, the Conſtitution and the Laws, he could Expect no Security from that Law, he himſelf had Violated; That ſuch an Attempt would falſify his own Declaration from* Breda, *wherein he had Acknowledged the Parliament to be a* **Vital Part** *of the Government, becauſe by ſuch an Attempt, he would* Kill *that Vital Part with the very* Sword *the Parliament had Truſted in his Hands,* Monſtrum Horrendum Ingens! *That the* French *King's Hands were too fully Employed in War, to ſpare Forces to ſupport the King in ſuch a Daring and Dangerous Attempt; That when the Stroke was given, and the King had Declared War upon his own People, he would be Deemed a publick Enemy to* Britons, *and to the Liberties of* Britain; *or, however, no Man could Anſwer for the Event of ſuch Provocations, or could foreſee whoſe Sword would prove the Longeſt.*

Theſe Arguments, together with the Thirſt of obtaining Money, prevailed, and the King Recalled his *Diſpenſing* Declaration, and Cancell'd it in Council, by Tearing off the Great Seal with his own Hands; But Biſhop *Parker* writes, *That Earl* Shaftsbury, (then, or late, Lord Chancellor) *Declared in the Houſe of Lords,* That King *Charles* did but *pretend* to Repeal that Diſpenſing Declaration.

SECT.

SECT. XI.

THE Teſt-Act thereupon, as a Retribution to the Popiſh Councils, paſſed, Diſabling all Papiſts to hold Places of Truſt or Profit; but the Commons, at the ſame Time, gave the King a Tax of 1,238,000 *l.* notwithſtanding they ſaw, at that very Time, an Army Encamped on *Black-Heath*, many Parts of which were commanded by Popiſh Officers, and ready to be ſent (as 6000 of them were ſent under *Schonberg*) againſt a Proteſtant Country, and knew that this Money would be Employed to carry on the War againſt *Holland*, to Increaſe the *French* Power; whereupon the King took the Money and Diſmiſſed the Sitting of the Parliament, and fruſtrated their Conſultations for near ſeven Months, *viz.* from the 29th of *March* till the 20th of *October* 1673.

SECT. XII.

THIS Long Standing Parliament, whilſt the *Court-Party* were Predominant, and Liv'd on their Penſions, Deſerved the Characters that have been given them, *viz.* Biſhop *Burnet* writes, *That a Standing Parliament Changed the Conſtitution* (*i. e.* Subverted it) *becauſe when the King Conſulted with ſuch a Parliament, he did not Conſult with his People, nor know them*; for the People had long been Deprived of their Liberty of *Electing*, and ſo were not fairly Repreſented: But that which ſaved the Conſtitution, was, That this Party had got into their Heads, *That as they muſt not give the King too much at a Time, leſt there ſhould be no more Uſe of them, ſo they were to take Care, not to ſtarve the Court, leſt they themſelves ſhould, by that Means, be Starved.* And Biſhop *Parker* Writes, *That this Standing Parliament* (which was Choſen ſoon after the Reſtoration) *ſhewed their Loyalty in nothing more, than in Raiſing Taxes; they gave the King whatſoever Sum he Deſired, and, by their Munificence, taught the King to be Prodigal, and that nothing had ſo ill an Effect on the King, as that profuſe Tax of two Millions and an half, given in* 1664. This Biſhop alſo writes, *That this Parliament Treated the Project of Eſtabliſhing a Good Underſtanding and Amity amongſt his Majeſty's Proteſtant Subjects, with the Higheſt Indignation; and that when*

Burnet, 387.

Parker, 380, 381.

Parker, 132.

Ibid. 387.

the Country-Party *came to be the Majority, and the Commons Queſtioned the Acts of the Regal Power, and obliged the Government to make a Peace with the* Dutch *in* Feb. 1673. *It was a manifeſt* **Revolt** *from the King in Parliament.*

But, however, it may be preſumed, That the Popiſh Cabal being now Enraged at Paſſing the *Teſt-Act*, Added to the Popiſh Plot, in which King *Charles*, by his ſecret League with *France*, was Engaged, the Bloody Part, whereby the King himſelf was to be taken off, and removed, as a Perſon unſteady and unfit for the Grand Undertaking; and the rather, ſince he had Treated the Papiſts, by paſſing the *Teſt-Act*, ſo very Unkindly.

SECT. XIII.

THE Parliament met on the 20th of *October* 1673. and were Adjourned to the 27th of the ſame Month, when the King Asked further Supplies, not only to carry on the War againſt the *Dutch*, but to pay off the Bankers, whom he had unjuſtly ſpoiled, by ſhutting the *Exchequer*.

But the *Country-Party* being by Deaths and new Elections now become ſtrong, were out of Countenance, and Aſham'd of giving ſo much Money to promote the Cauſe of Popery, and to ſupport thoſe ſecret Meaſures which Tended to a Diſſolution of their own **Being**; and as to the Bankers, *They* had *Conſpired*, and lent the Money, to Render the Parliament uſeleſs, becauſe without that Loan, the *Triple Alliance* had not been broken, nor the War made upon the *Dutch*; and therefore the Commons Reſolved to take no Cognizance of their Caſe, nor to give any more Money to the King, 'till they were ſecured againſt Popery, and Relieved againſt their other Grievances; and further Voted, *That the Standing Army and the Alliance made without their Privity with the* French *King, were Grievances*; whereupon the King, in great Anger, at the End of nine Days, Diſmiſſed their Sitting for nine Weeks.

SECT.

SECT. XIV.

THE Parliament met on the 7th of *January* 1673. and Addreſſed the King to conclude a Peace with the *Dutch*: His Majeſty did not, at this Time, object, *That this Addreſs made any Invaſion on his Prerogative of making Peace, but took the Advice, and made the Peace*; The Parliament proceeded vigorouſly in voting againſt Standing Armies including in thoſe Armies the King's Life-Guards, and inſiſting, *That no Guards* (other than the Yeomen of the Guard, and the Band of Penſioners) *ought to be Allowed*: They alſo Voted ſmartly againſt Popery, againſt the Counſellors of the Cabal, and againſt Illegal Impriſonments, and brought in the *Habeas Corpus* Bill, *&c.* but the King, with great Diſpleaſure, ſtopp'd their Career, without paſſing any one Act, and Diſmiſſed their Sitting for the Space of one Year and two Months, until the 13th of *April* 1675. which was a Prorogation contrary to the Act of Parliament for holding Annual Parliaments.

A Naked Peace was made with the *Dutch* and *Spain*, on the 11th of *February*, 1673, without Entering into any Alliances againſt *France*, which left King *Charles* at Liberty to Continue (and he did Continue) his *Britiſh* Forces in the *French* King's Service, to Aſſiſt him in all his Wars againſt *Holland*, the Empire, *&c.* It is therefore probable, that this Peace was made with the Connivance of *France*, who now Eſteemed King *Charles* Unſucceſsful in War, and more Uſeful to Act as a Mediator for Peace.

The Time, therefore, for the *French* King's making King *Charles* Abſolute Maſter of his Parliament, was Reſpited 'till a more ſeaſonable Opportunity.

SECT. XV.

THE Dreadful Calamities and Effuſion of Blood, which the Breach of the Triple Alliance cauſed in *Europe*, are not to be paſſed over without Obſervation; and no Hiſtorian hath ſo lively Repreſented them, as Biſhop *Parker*, in the Hiſtory of His Own Time; for he attributes to that Violation, the Havock of Parker, 149, 150.

of Men, which, he ſays, ought, at this Day to be Lamented: That as ſoon as it was Broken, the *French* King Invaded every Place, Attacking thoſe Separately, whom he durſt not Attack Jointly; ſo that *Europe* was ſuddenly in a Conflagration; and firſt of all, *Holland* was, as it were, in an Inſtant, Over-run as far as *Amſterdam*, with a great Slaughter.

Parker, 173. That this Proceeding obliged all the People of *Europe*, from their ſeveral Habitations, far and wide (except *Britain*) to Defend themſelves againſt this Over-grown Warrior, whence there was ſo vaſt a Deluge of Chriſtian Blood, as never before hap-
Ibid. 214, 215. pened in ſo ſhort a Time: That the Bloody Wars in the North, Waged by *Brandenburgh* and *Denmark*, againſt *Sweden* (who being Incenſed at the Baſeneſs of the Violation of the Triple League, had Entered into an Alliance with *France*) were occa-
Ibid. 259, 260, 271. ſioned by that Breach: That the Incurſion of the *Turks* and *Tartars*, into *Poland*, the Rebellion of *Meſſina* againſt the *Spaniard*, and the Rebellion in *Hungary*, againſt the Emperor, did all of them Ariſe from the Breach of the Triple Alliance, and Swept away prodigious Numbers, with dreadful Slaughters:
Ibid. 282, 291. And that the Invaſion of the *Turks*, and their Siege of *Vienna*, in 1681, and the ſubſequent Wars in *Hungary*, proceeded from the ſame Fountain (*i. e.* The Breach of the Triple Alliance)
Ibid. 301. That the bloody Battles Fought on the *Rhine*, between *Turenne* and the Duke of *Lorrain*, and *Turenne* and *Lorge*, againſt the *German* General *Montecuculi*, and in *Flanders*, between the Princes of *Orange* and *Conde*, at *Seneffe*, beſides Numerous and Bloody Sieges, were Evils, which the Breach of the Triple Alliance brought upon the *European* World.

This Biſhop's Memoirs, proves, how Uſeful Hiſtory is, to Repreſent the Blemiſhes and Evil Conduct in Government, to the End, Poſterity may Avoid the like Errors; for if theſe Truths had been Aſſerted by other Hiſtorians, they had been Treated with Scorn and Contradiction.

SECT. XVI.

THE Proceedings between this King, and his Parliament, after the Peace made with the *Dutch*, in *February* 1673, 'till the 11th Day of *Auguſt*, 1678, when the ſeparate Peace at *Nimeguen*, was made between *France* and *Holland*, were Unex-

ampled,

ampled, and Introduced into View, many Parts of the Conſtitution, as follows.

During the Campaigns of 1674, and 1675, the *French* King, by his own Single Power, Carried on the War againſt *Holland*, *Spain*, and the *Empire*, *&c.* with great Succeſs, and ſhewed, That he was an Over-match for them all, in which the English Forces, which King *Charles* ſent to Aſſiſt him, performed Extraordinary Services, and turned King *Charles*'s Mediation at *Nimeguen*, for a Peace, into a mere Amuſement, whilſt the *French* King, with the Underhand Aſſiſtance of King *Charles*, Carried on his Military Undertakings.

The Parliament met, on the 13th of *April*, full of Rage to ſee, not only no Care taken of the *Defence* of the Nation, but the Kingdom Expoſed to be Subdued and Enſlaved, by a Neighbouring Potentate; therefore the King, in Return for their Heat, diſmiſſed their Sitting, during two Years, except two Months, (*viz.* 'Till the 15 of *February*, 1676).

SECT. XVII.

THIS Provoking Uſage of the Parliament, and the Amazing Progreſs of the *French* Arms, brought upon the Stage, the Debates between this King, and his Parliament, whether the Parliament had any Right or Power, to Intermeddle in making *War* or *Peace*, or in making Alliances to Support them: The Facts which drew this Matter into Queſtion, were theſe;

The Parliament Met on the 15th of *February* 1676, in ſome Diſcontent; however, they gave 600,000 *l.* for the Publick Service, but appropriated that Money to Build Thirty New Men of War, and Addreſſed the King to make Alliances againſt *France*; and if *War* enſued, they would Support thoſe Alliances; but the King preſſed them to give him 600,000 *l.* more, Antecedent to the making Alliances, to Enable him, as he ſurmized, to ſpeak more effectually; but the Parliament *Diſtruſted*, and the Thing being Unparliamentary, to give Monies to Maintain Alliances, or Wars, before thoſe *Alliances*, or *Wars*, were made, was denied; and therefore the King Graſped at, and took the 600,000 *l.* already given to Build Ships, and then Diſmiſſed their Sitting, for Five Weeks.

Echard 392. The Parliament Met on the 22d of *May*, 1677, where great Debates aroſe, about the Averſion of the Miniſters, to Enter into Alliances againſt *France*: whereupon the Parliament Reſolved on an Addreſs full of Vigour; wherein they Repreſented, *The Purſe and Power of* France, *to be too great to be Contended with, by this Nation Singly, neither could the* Dutch *withſtand him, but* Both *together might*; *And that the Charges and Inconveniences that would fall on the Kingdom, if the* Dutch, *for Want of timely Encouragement and Aſſiſtance, ſhould make a ſeparate Peace, would be Inſupportable*: And therefore they Adviſed, and humbly Prayed his Majeſty, *To Enter into a League,* Offenſive *and* Defenſive, *with the* Dutch, *and with others, againſt* France, *for ſaving the* Spaniſh Netherlands, *as the only Means to Defend* Britain; Aſſuring him, *That the Sequel of ſuch Alliance, would Center in Safety, in Regard his People were* Unanimous *in the Cauſe*; and they promiſed to Support thoſe Alliances, with all their Power.

Ibid. 932. Parker, 409, 410. But the Popiſh Cabal could ſee Safety, and not Danger, from the Growth of the *French* Power; and, purſuant to the Advice of the Cabal, the King, in a Speech to the Commons, on the 28th of *May*, 1677, told them, *Their Addreſs contained Things* Unfit *for them to* Meddle *with*; *for they Entrenched on his* undoubted Prerogative *of making* Peace *and* War, *which had never* (when the Sword was not Drawn) *been ſo Dangerouſly Invaded, becauſe they did not content themſelves, with deſiring to Enter into Leagues, but tell him what Sort of Leagues they muſt be, and with whom*: He ſaid, *That if he ſhould ſuffer that Fundamental Power of* making War *and* Peace, *to be ſo Invaded, as to have the Manner and Circumſtances of Leagues* preſcribed, *no Prince, or Potentate, would longer believe the* Sovereignty *of* England *Reſts in the Crown*; therefore he aſſured them, *No Condition ſhould make him Depart from ſo Eſſential a Part of the* Monarchy.

Echard 93. Upon this, the King Diſmiſſed their Sitting for Seven Months, and upon their Riſing, cauſed his Speech to be Printed in the *Gazette*, as an *Appeal* to the People.

Upon this Diſpute, it was Argued for the King, *That the King had the ſame Power of Making* War *and* Leagues, *as the Commons*

Commons had of Giving Money: *He could not have* Money *without them, nor they* Alliances *without him.*

It was Argued for the Commons, *That by the Fundamental Conſtitution of Parliament, and by the Expreſs Words of the Original Summons to it, they had a Right and a Power to Inquire into the* **State** *of the Nation, and to Adviſe the King What to do,* what Wars *to make, and* what Alliances *to enter into, in Caſe thoſe* Wars, *and thoſe Alliances, were neceſſary for the* **Defence**, *of the Nation; for, who could be more proper to give Advice, about that* **Defence**, *than thoſe who were to bear the Charges, and to ſuffer moſt for Want of that* Defence ; *and that if this were not Reaſonable, the Conſtitution and the Form of this Government was Egregiouſly Infirm and Defective* ; And many Precedents were produced, to ſupport theſe Arguments.

And as to the Sentiments of Neighbouring Princes, and Potentates, it was Argued, *That* Reputation *was the Life of Government, and* Diſreputation *the Bane of it, and that every Prince in* Europe, *was well Apprized, That the* Acts *of the King's Sovereignty, whether thoſe Acts were,* War *or* Peace, *without the good Liking and Conſent of his Parliament, were half-form'd Things, without Sinews or Strength to* Defend *this Nation's Friends, or* Offend *its Enemies.*

SECT. XVIII.

AT this Time, the Prince of *Orange,* being Stadtholder, and Captain-General of the States Army, and being borne down by the *Over-grown Power* of *France* ; but not ſuſpecting the *ſecret League,* nor the Uſe intended to be made of the *French* Power, Reſolved to make one Effort, to engage (if poſſible) *England* in its own *Intereſt* ; and conſequently in a hearty *War* againſt *France* ; for which End, he, at the End of the Campaign 1677, made a Tour to *London,* and, in Perſon, requeſted of the King the Princeſs *Mary,* the Duke of *York's* Eldeſt Daughter, in Marriage. The Briskneſs of the Attempt, and the Univerſal *Voice* of the People, at this Time, weighed down the Duke's Influence, and prevailed with the King, and the Marriage being ſolempnized on the 4th of *November* 1677, the Prince was admitted into the Cabinet-Councils, where he ſo behaved, That the King and his Miniſters came to a *Warm Reſolution,*

Reſolution, To ſet down the Terms of the Peace, and ſend them to *Paris*, and demand a Compliance within a Time limitted, and in Default thereof, to declare War inſtantly; Part of which Terms were, *That* France (to make for the *Dutch* a compleat Barrier) *ſhould yield up* Valenciennes, Conde, *and* Tournay.

This Reſolution being taken, a Meſſenger (the Lord *Duras*, afterwards Earl of *Feverſham*, a *Frenchman*, and a Creature of the Duke's) was ſent with the Errand, and the Prince with his Princeſs, were hurried away to *Holland*, without Decent Compliments paid them at their leaving *London*; but *France* Evaded giving an Immediate Anſwer, and by Concert with *Duras*, ſpun out the Matter into Dilatory Expoſtulations.

Echard, 936. The King ſeeing the Parliament would give no Money without Entring into an *Alliance* with *Holland*, he wav'd Declaring *War*, as he had promiſed the Prince, and Contented himſelf with Signing a Draught of a former *Jejune* Alliance, and ſent it to *Holland* by Mr. *Thynne*, which the *Dutch*, rather than none, Accepted, and Signed it on the 16th of *January* 1677, For the *French* Preparations had put them into a Great Conſternation: But with what *Sincerity* this Alliance was Entred into, Biſhop *Parker* writes he would ſhew in a proper Place.

Parker, 199. The Parliament met on the 15th of *January* 1677. and by the King's Directions Adjourned for 13 Days, 'till *Monday* the 28th Inſtant, within which Time his Majeſty ſhould (as he Intimated) have Matters of great Importance, to impart to them; and when they met on the 28th, the King Acquainted them with ordinary Matters, touching the Prince's Marriage, and with the *Alliance* he had made with *Holland*, againſt *France*; and Demanded Supplies, to raiſe 30,000 Men, and for a Fleet of 90 Men of War, in Order to Declare and Carry on a *War* againſt *France* vigorouſly.

Echard 938. The Commons, believing now, the King to be in Earneſt, Addreſſed him, not to Admit of any *Treaty of Peace*, whereby the *French* King ſhould be left in Poſſeſſion of any greater Dominion or Power than was left him by the *Pyrenean-Treaty*, and to ſtop all Commerce with *France*.

This

This Addreſs tried the Popiſh Cabal to the Quick; and the King, by a Meſſage in Writing, ſent on the 4th of *February* 1677, Revived his Quarrels, and Charged the Commons, *That they had taken no Notice of his Speech of the 28th of* May 1677. *but had added to their former ill Conduct, new Invaſions on his Prerogatives*; Adding, *That the Rights of Making and Managing* War *and* Peace *were his, and that if they thought he would depart from any Part of that Right, they were* **Miſtaken.**

The King now Menaced the Commons, *That if they would not Grant the Money he Demanded, he would immediately Relinquiſh the* War; The Commons therefore paſſed the *Poll Bill, to raiſe one Million*; but, at the ſame Time, on the 14th of *March* 1677, they prepared an Addreſs, To proclaim *War* againſt *France*, inſtantly, and to diſmiſs the *French* Ambaſſador, and ſent the Addreſs to the Lords, for their Concurrence. Parker, 411.

But before the Addreſs could be perfected in the Lords Houſe, the Popiſh Cabal haſten'd the King to Anticipate the Addreſs, and to ſecure, againſt all Events, the Money-Bill, which he did, by paſſing it on the 20th of *March* 1677. and on that Day **Diſmiſſed** their Sitting for a Month.

Biſhop *Parker* Writes, *That in this Manner the King at length, with much ado,* Extorted *from the Commons that Supply which he had* (without Effect) *Deſired for a whole Year together.* Ibid.

The King, immediately, upon paſſing the Poll-Bill, raiſed, in ſix Weeks Time, an Army of 20,000 Men compleatly Cloathed and Armed. Echard, 939.

SECT. XIX.

THE Parliament met on the 29th of *April* 1678, before which Time, the *French* King had, as afterwards appeared, privately ſecured a ſeparate Peace with the *Dutch*; and the King, by his Speech to his Parliament, inform'd them, he had Diſcovered, *That the* Dutch *were Entring into ſuch a ſeparate*

Peace, and therefore Cautelously Demanded the Advice of **both Houſes** *how to proceed.*

The Commons being Enraged to ſee their King ſuffer his Solemn and Boaſted Mediatorſhip at *Nimeguen*, to be turn'd into Mockery, and not ſuſpecting it was done by private Concert, immediately Voted, *To give their Advice for an* **Actual War**, *ſtricter Alliances with the* Dutch, *and a Removal of thoſe Evil Counſellors; and, particularly, Duke* Lauderdale, *who had Adviſed his Majeſty's Diſſatisfactory Anſwers to their former Addreſſes.*

The King took Advantage of his Cautious Demands of the *Joint Advice* of both Houſes, inſiſting, *That ſince he had Deſired the Advice of* **Both**, *he would give no Anſwer, 'till he had the Concurrent Advice of Both*: Which Anſwer the Commons took for a ſufficient Teſtimony, That the King had rather ſee the laſt Town in *Flanders* loſt, than Declare *War* againſt *France*; and to Diſconcert the Parliament, the King, on the 13th of *May* 1678, **Diſmiſſed** their Sitting for ten Days; at the End of which Time, the King, by his Speech, Referred to the Parliament, the Conſideration of the *Continuance* or *Disbanding* of the Army, but propoſed their Continuance for ſome ſhort Time.

The Commons, by their Vote, now put the Alternative on the Miniſters, *viz. That if the King would enter into the* War, *they would maintain it; if not, they would provide for the ſpeedy* Disbanding *the Army*; and ſoon after, they paſſed thro' their Houſe, a Money-Bill, to raiſe 619,000 *l.* for *Disbanding* the Army, and limited the Time to be, on or before the 27th of *July* 1678.

But the Money-Bill being ſafe in the Lords Houſe, the King went on the 18th of *June* 1678, and in an Affecting Speech to both Houſes, propoſed to them, to make an Addition of 300,000 *l. per Annum*, to his Revenue for his Life, inſinuating, *That without it, he could never live in Quiet with them*; and on a Day, when the Lord Treaſurer (*Danby*) imagined he had got in the Houſe a Majority, by the Appearance of all his Dependants, he procured the Matter to be Moved; but the Treaſurer's Computation proved Erroneous, and the Commons treated this Demand, of an Additional Revenue, not only with much

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much Coldneſs, but with Roughneſs, and rejected it, without a Diviſion, Remembring what *Treatment* their late Advices, for the **Defence** of the Nation, had received; and ſo the King *Diſmiſſed* their Sitting 'till the 21ſt of *October* 1678.

SECT. XX.

ABOUT the Time of this Seſſion of Parliament, it was diſcovered, that ſome Secret Intrigues with *France*, of a *Black Complexion*, had been Carried on, and Negotiated, whereby *France* was to give the King 600,000 *l. Sterling*, to be paid in three Years, in Return for his permitting that King to *pre-* Burnet, 421.
ſcribe the Terms of *Peace* at *Nimeguen*; which Sum of Money, together with the Additional Revenue of 300,000 *l. per Ann.* if obtained, would Enable the King to Adminiſter a *Military Government*, 'till his Parliament could be brought again into Humour (*i. e.* 'Till good Humours and Conditions, could be Impoſed on them, *Al a Mode de France*.

This Diſcovery drew upon the Head of the Lord Treaſurer Ibid.
Danby, a Load of Hatred and Calumny.

The ſeparate Peace between *France* and *Holland*, was Signed on the 11th of *Auguſt*, 1678, on the *Miſerable* Terms which *France* Impoſed; and ſo the Opportunity of **Defending** the Nation, was left to a Time, when that **Defence** became Doubtful, and amazingly Hazardous and Expenſive; i. e. 'Till the Revolution in 1688.

SECT. XXI.

THE Parliament Met on the 21ſt of *October*, 1678. At which Time, the Popiſh Plot was Opened, even when it was Ripe for Execution, which, although the immediate Proſpect of War was, for the preſent, Removed out of Sight, Raiſed in the Nation a greater Heat and *Fear* of Popery and Slavery, than had been ever before heard of.

It was alſo, at this Juncture, diſcovered, That the Lord Treaſurer, and Prime Miniſter, *Danby*, Judging, *That from the Occurrences which had Paſſed in Relation to the Alliance made*

made with the Dutch, *and from the King's Declining to Enter into the* War *againſt* France, *the People's Purſes would Shrink, and that the King's Profuſions could not be Supplied*: He therefore Inſinuated, *That to Enable his Majeſty to Govern as he deſired, it was reaſonable* France *ſhould pay a Round Sum, for the Advantages they Reaped, from his Majeſty's Management of the Parliament.*

The King, with his own Hand, Signed all the Inſtructions for this Money-Affair, by which the Lord Treaſurer was to proceed; and, for the greater Secrecy, appointed Mr. *Chiffinch* to be his Treaſurer, to Receive the *French* Penſion.

The Treaſurer *Danby*, in *January* and *March*, 1677-8, wrote ſeveral Letters to Mr. *Montague* (afterwards Duke of *Montague*) then Ambaſſador at *Paris*, directing him in every Thing how to proceed.

But whether King *Charles* got the Money, doth not plainly appear: This Effect, however, appears, *That from ſome Steps by which the Treaſurer apprehended Mr.* Montague *was not a proper Agent to Compleat this Black Affair, a great Animoſity between them was Raiſed.*

Mr. *Montague*, therefore, without Leave, Retired from his Embaſſy, and procured himſelf to be Choſen a Member of that Parliament which met on the 21ſt of *October*, 1678, and took Fire at the Dangers appearing in the Popiſh Plot, juſt then Diſcovered, which nevertheleſs were in a ludicrous Manner treated by the Treaſurer *Danby*; of which, Complaint being made to the Houſe of Commons, it gave a favourable Opportunity to Mr. *Montague*, to drop ſome Words of the Treaſurer's ſecret Intrigues, to promote the *French* Intereſt, and, in Imitation of *France*, to Erect a Military Government in *Britain*.

This Alarmed not only the Treaſurer, but King *Charles* himſelf, leſt their *Expoſing* to Sale the publick Intereſt, ſhould be publickly *Expoſed*, inſomuch, that the King took the Opportunity on the 19th of *December*, 1678, when Mr. *Montague* was Sitting in the Houſe of Commons, to Seize his Papers; of which his Majeſty immediately ſent a Meſſage to the Houſe, Informing them of what he had done. Mr. *Montague* was

Amazed,

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Amazed, but having wiſely Provided againſt the Expected Tempeſt, he Inſtantly acquainted the Houſe, *That he had in his Cuſtody, ſome Papers, which, he conceived, would be of great Importance*: And thereupon three Members, by Order of the Houſe, and by Mr. *Montague*'s Direction, fetched a Box of Writings, whereout were taken and Read, two of the Lord Treaſurer's Letters, containing the Directions before mentioned.

The firſt Letter was Dated the 17th of *January*, 1677, (two Days after the Adjournment of the Parliament, for 13 Days before mentioned) wherein Lord *Danby* took Notice, *That* France *was Reſolved not to Part with* Tournay, *and that the* French *Ambaſſador* Barillon *had Endeavoured to Engage Lord* Danby *to find ſome Expedient to ſave* Tournay; aſſuring him, *That King* Charles *might certainly depend upon all Aſſiſtances and Supplies from his Maſter the* French *King, in Caſe their Friendſhip were preſerved*; And the Treaſurer aſſured Mr. *Montague, That one Principal* Cauſe *of the Parliament's Adjournment from the* 15th *of* January, 1677, *for* 13 *Days, was to ſee if any Expedient for the Peace, could be found out in that Time.*

The other Letter was Dated the 25th of *March*, 1678, In which were theſe Words, *In Caſe the Conditions of the* Peace *ſhall be Accepted, the King Expects to have Six Millions of Livres a Year, for three Years, becauſe it will probably be two or three Years before the Parliament will be in* Humour: *All poſſible Care muſt be taken, to have this whole Negotiation as Private as poſſible, for Fear of giving Offence at Home*; At the Bottom of the Letter, were theſe Words, *This Letter is written by my Order*, C. R.

The Reading theſe Letters, blew up the Houſe into a Flame, whereupon it was Argued, *That now it was evident, that there was a* ſecret League *with* France; *that King* Charles *was to have Aſſiſtance and Supplies from thence, againſt* Some-body, *which could not be againſt* Holland, *or* Spain, *and therefore it muſt be againſt his* own People; And yet this Aſſiſtance, or Supplies, were not to be had, but upon Condition, if the Friendſhip ſhould be preſerved, *i. e.* That King *Charles* muſt either Comply with whatſoever *France* Impoſed, or Break the Friendſhip.

That theſe Letters ſhewed, the **Secret League** Subſiſted, and was Carrying on at the very Time when the Parliament was, on the 15th of *January*, 1677, directed to Adjourn for thirteen Days, to be then acquainted with a **Matter** of great Importance. The Meaning whereof, was, That the Expedient for the Peace, was the Settling the *Price* for it; for the Matter of great Importance, when it came out, was no more, but that his Majeſty had, on the 16th of *January*, 1677, made an *Alliance* with the *Dutch*, againſt *France*. It was Argued, *That it was plain the Army of* 20,000 *Men, lately Raiſed, was Raiſed for* ſome Purpoſe, *but not to make War againſt* France.

That from theſe Letters might be Collected, That there was ſome **Dark** Meaning in the King's deſiring a Continuance of theſe New-Raiſed Forces; and, above *all*, it was plain, That the Reaſons why his Majeſty refuſed to make *Alliances and War* againſt *France*, were to preſerve his Friendſhip with *Lewis* the XIVth, in Hopes of Aſſiſtance and Supplies againſt **Somebody**.

And, upon the whole, the *Alliance* with the *Dutch*, and the late Speeches and Meſſages to the Parliament, touching the **Defence** of the Nation, could proceed from no other Cauſe, but *Inſincerity*, and that the *Britiſh* State was under the Influence of *Thoſe*, who were Engaged in an Intereſt againſt it.

The Commons thereupon Impeached the Lord Treaſurer *Danby* for High Treaſon.

The **Treaſon** Charged on him, was, *That he had Endeavoured to Subvert the Antient and Fundamental* **Form** *of Government of this Nation, and to Introduce an Arbitrary Way of Governing.* The Overt-Facts of which Treaſon, were Six in Number; but the three firſt are ſufficient to be here touched upon, *viz.*

I. *That he had Accroached Regal Power, by Treating of* Peace and War, *with Foreign Princes, and by giving Inſtructions to the* Engliſh *Ambaſſadors, without firſt Communicating the ſame to the Secretaries of State, or to the Privy Council.*

II. *That*

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II. *That he had Deſigned the* Raiſing *an Army upon Pretence of a* War *againſt the* French *King, and then to continue the ſame, as a Standing Army to* Awe *the Parliament; And an Army being ſo Raiſed, and no* War *Enſuing, an Act of Parliament paſſed, to Pay off and Disband the ſame, and a great Sum of Money being granted for that End, he* continued *this Army contrary to the ſaid Act, and* miſemploy'd *the Money given for the Disbanding, to the* Continuance *of the Army.*

III. *That he, to hinder the Meeting of Parliaments, and thereby to alter the Original Conſtitution, did propoſe and Negotiate a* Peace *for the* French *King, upon Terms Diſadvantageous to the* Intereſt *of* England; *for the Doing whereof, he did intend to procure a great Sum of Money from the* French *King, for Enabling him to maintain his Traiterous Deſigns.*

But this great Miniſter being Conſcious of the Facts or Overt-Acts of the Treaſon, for which he was Impeached, and having in his Cuſtody the Secret Orders and Inſtructions under the King's own Hand, for committing the very Offence; he claimed from his Majeſty, *That if he would prevent his own Orders and Inſtructions from being* Expoſed *and Reproached, he muſt Deliver him* (the Earl of *Danby*) *either by* Pardoning *the Offence, or by Breaking the Parliament.*

The King, therefore, in order to gain Time to pardon the Offender, did, on the 30th of *December* 1678, firſt Prorogue, and then Diſſolve the Parliament.

The new Parliament Commenced on the 6th of *March* 1678, when the Lord Treaſurer *Danby* pleaded in Bar of the Impeachment, *That the King, by Letters Patents under the Great Seal of* England, *had Pardoned the Impeachment, and all the Offences Charged in it.*

The Commons thereupon Appointed a Committee to ſearch how, and in what Manner, and by what Means the *Pardon* was Obtained; who found, that the *Pardon* had not paſſed any of the Offices, through which the King's Letters Patents ought to paſs; but that the King having Ordered the *Great Seal* to be brought by the Lord Chancellor *Finch*, to *Whitehall*, and laid on his Table there, his Majeſty wrote his Name on the

the Top of the Parchment, which had Wax fixed on it; and the Seals being taken out of the Bag, the Perſon, who uſually carry'd the Purſe, did, by the King's *Expreſs and Poſitive Command*, Seal, or Affix the Great Seal to the Parchment.

The Commons, therefore, as a Houſe, went in a Body to the Bar of the Houſe of Lords, and, by their Speaker, Demanded Judgment againſt the Earl of *Danby*, Inſiſting, *That the Plea in Bar had confeſſed the Crime charged in the Impeachment, and the Guilt of it; and that the* Pardon *ought not to be allowed in Bar of the Impeachment of the Commons of* England; and Voted and Reſolved, *That no* Commoner *whatſoever, ſhould preſume to maintain the Validity of the* Pardon, *without Leave from that Houſe, and that the Perſons ſo doing, ſhould be Accounted Betrayers of the Liberties of the Commons of* England.

The Force of this Proſecution could not, by the King or his Prime Miniſter, be Avoided or Baffled, but by Reſorting to that Inglorious Practice of Diſperſing Parliaments, and *Deferring* the Courſe of Juſtice, and accordingly the King prorogued the Parliament.

SECT. XXII.

THIS was a Notable Struggle about that Part of the Conſtitution which Excluded the King from the Power of *Pardoning* Offences tending to the General Oppreſſion, and Wrongs to the Nation, in the Commiſſion whereof, he himſelf might be (as this King, in this Caſe, was) actually Concerned; for the King Avowed the Fact, *That what the Treaſurer had done, was done by his Order.*

It was, at this Time Argued, *That if the King could himſelf be the Author, and could Order, or Commiſſion the Offence to be committed, and then* Avow *the Offence, and, after that,* Pardon *the Offender, his Power would Superſede the Law of the Land, and Amount not only, to a* Diſpenſing *with, and Abrogating of it; but to a Subverſion of the whole Conſtitution, and a Change of the Fundamental Form of Government*: For the King had, in this Caſe, made himſelf *Judge* and *Party*; and therefore that Fact was a Breach of the Original Contract, and was Repugnant to Natural Juſtice and Reaſon: It was alſo Argued, *That an Impeachment was the* Voice *of every Indi-*

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Individual Perſon Crying out againſt a Wrong and Oppreſſion, *by which every one is equally Wounded: But if the Univerſality of the People, ſhould have Occaſion Miniſtred, and Continue to be Apprehenſive of the utmoſt Dangers from the Crown, from whence of Right they Expected Preſervation, the Conſequences muſt be Lamentable. That if a* Pardon *ſhould be a Bar of an Impeachment for Offences of this Nature, the chief* Inſtitution *of Impeachments, for Preſerving this Government, would be Eluded and Deſtroyed, and the Antient and Original Way of Governing Changed and Deleted.*

The *French* Greatneſs, under the Aſpiring *Lewis* the XIVth, did from theſe, and from a continued Series of the like Proceedings, grow up to a View of Univerſal Monarchy, and to a Puiſſance able to reduce even *England* as well as the Empire, *Holland, &c.* under an Abſolute Subjection; which could not afterwards be Avoided, but by their Uniting againſt that Potentate, in two long and bloody Wars, the one in the Reign of King *William* III. and the other in the Reign of Queen *Anne*, in which their Liberty was put in Doubt, their Wealth Exhauſted, and thoſe Nations Involved in Debts almoſt Inſuperable.

This Tranſaction repreſents to us again, what has been often before ſeen; to wit, not only how Dangerous a Thing it is, in Neighbouring States, to break the Ballance of Power, ſo as to put any one of them, into a Capacity of Oppreſſing and Overpowering the reſt; but alſo, that ſome Managers of the Publick Affairs will repeat the Nefarious Precedents of Bartering away the National Intereſt, for their private Gain, and ſell it for Money, even to Thoſe, whom they have moſt Reaſon always to hate, and always to be aware of.

SECT. XXIII.

THIS Proſecution of the Treaſurer, and the Riſing of the long ſtanding Parliament, which was at laſt Diſſolved, on the 24th of *January* 1678, produced buſy Speculations; but ſoon after, the Proceedings in the Popiſh Plot, Superſeded all others, Raiſed a grand Queſtion between the King and his Houſe of Commons, *viz. Whether any* Defence *for the Nation ſhould be made againſt the Apparent Danger of Popery and Arbitrary*

Power, which Appeared even at the Gates, and threatened the Conſtitution in the State, Equally with the Conſtitution in the Church, conſidered, as a Proteſtant Church.

The Commons, on their Part, came to a Reſolution, *That the* Excluſion *of the Duke of* York *was the only* Defence *that could be made, and that all others would prove Deluſions*: The King, on the other Part, was as Tenacious as the Commons, *That the Nation ſhould never have that* Defence, *nor the Duke be Excluded*: However, a Bill of *Excluſion* was brought in, and paſſed the Commons, and the Lord *Ruſſell*, Eldeſt Son of the Earl of *Bedford*, carried up the Bill to the Lords.

But the whole Bench of Biſhops were of Opinion, *That the Conſtitution of the Proteſtant Church of* England *was not in Danger from Popery*, and ſo Unanimouſly, gave Negative Voices, which made a Majority, and the Bill of Excluſion was Rejected.

However, the Commons continued obſtinate in Puſhing at the Excluſion, and the King equally obſtinate, in croſſing them; he therefore broke all their Meaſures, by Diſmiſſing their Sitting ten times, and at laſt finally *Diſſolved* them at *Oxford*, on the 28th of *March* 1681, Declaring (as the Courtiers gave out) *That he would live on his own Revenues* (which were great) *and never more Trouble Parliaments*; who had Truſted him with that Revenue.

SECT. XXIV.

AT this Time, Commenced a new *Æra*, and an intire Alteration, in order to ſtrike at the Root, and overturn the Conſtitution; for the King Diſmiſſed himſelf, in a manner, from the Government, and *Delegated* over the whole Adminiſtration into the Hands of his Brother, the Duke of *York*, who Undertook to ſecure his own *Succeſſion*, without giving the King any more Diſturbance; and the Careleſs King was glad of being eas'd of the Trouble, and to ſtand by, as unconcerned, at his Brother's Management of the Government, contenting himſelf to be Attended at his Levées, and, in his Walks, like a Duke, whilſt the Duke was, at his Levées, and in his Walks, Attended like a King: Inſomuch that from this Time, *viz.* from the firſt of *April* 1681, during the Reſt of King *Charles*'s Reign, the Duke

Duke may be look'd upon as *King*, *in Potentiâ* (Except the Name).

As ſoon as this was known, the Eagerneſs to Exclude him, Changed into Courting and Magnifying him, and into a manifeſt Coldneſs towards the King; all Applications were made to the Duke for Preferments in Church and State; he made the Biſhops, and Garbled the Judges, 'till he had made a Set to his Mind, of whom, ſome of them Acted more like furious Proſecutors, than Judges.

SECT. XXV.

THE Popiſh Cabal of Counſellors, contrived and provided Schemes for the Duke, to purſue in Cutting down, not only the Chief Promoters of his Excluſion, but to Impoveriſh and Intimidate all Oppoſers of his Intereſt, or *Succeſſion*, by the Means following:

I. To make an Attempt on the **Eſſence** of the Legiſlature, and to Strike at that Root of the Conſtitution, which concerns the free Elections of Members of Parliament, by Proſecuting *Quo Warranto's* againſt ſuch Cities and Boroughs, as Elected and Sent Members, to Wreſt from them their Local Rights and Privileges, by getting into the King's Hands, the Nomination of the *Returning* Officers, in order to ſecure, 1. *The* Packing *of Parliaments, as King* Richard II. *had done.* II. *The* Packing *of Juries, for Accompliſhing the* Bloody Part *of their Deſigns*: And for this End, to begin with the *Metropolis* of *London*, where the Liberties of the Nation Centered, and, in ſome Sort, appeared as an United, Rich, and Powerful Body; after which, all the reſt of their Work would be found Eaſy and Practicable. Burnet, 540.

II. To Accuſe and Turn all the Meetings of thoſe Zealots, who Proſecuted the Popiſh Plot, and Promoted the Excluſion of the Duke, into Conſpiracies and Treaſonable Conſultations, to Compaſs the King's Death, as if the one, differed not from the other; and ſo to Return them Plot for Plot, and Occiſion for Excluſion.

III. To Encourage Satirical and Fiery Writers to Feed, and even Glut, the World with Printed Papers, wherein were *Blacken'd*

Blacken'd the Principles of thoſe Gentlemen, who, in the Year 1640, and 1641, by the *Invitation* of the *Scots*, and their Invaſion, had found Means to *Reſcue* the Conſtitution, and the National Freedom, from under that Arbitrary Power which **Impoſed** Taxes by Ship-Money, *&c.* without a Grant thereof in Parliament, *&c.* as the moſt Profligate and Deteſtable Tenets in Nature, and placed under the ſame Rank of Blemiſhes, all the preſent Aſſertors of this Conſtitution; in which Conflict of Whetting Prints, was Begotten thoſe Characteriſtick Denominations of Parties, called **Whigs** and **Tories**.

IV. To Proſecute, as Implacable Enemies to Arbitrary Power and Popery, the Proteſtant Diſſenters, with a Rage and Fury, equally Implacable, until they ſhould be by Fines and Impriſonments, either Impoveriſhed and Extirpated, or Driven out of the Nation, or to hide themſelves in It.

V. To Encourage and Prefer ſuch of the Clergy, as would Preach, and ſuch Writers, as would Enforce, the Doctrines of Paſſive Obedience, without Reſerve, and Unlimited Non-Reſiſtance.

When this Hint of Preferment was given out, the Preachers and Writers carried thoſe Doctrines beyond all Bounds, and put ſuch Gloſſes on the Words *Sovereignty*, and *Sovereign Power*, as brought under them, all Mens Rights, Liberties, and Properties, without pointing out any Limitation; but rather Aſſerted, *That Allegiance was Unconditional*: as if there were no Laws in *Britain*, of any Uſe, to Defend the People from Wrongs or Oppreſſions: Which was, in Effect, to throw down their Fences, and lay Waſte their Incloſures. But the End and Fruit of all theſe Learned Labours, was expected to be, their ſtrenuous Aſſerting and Maintaining, *That the Duke of* York's *Right of Succeſſion, was Unalterable, and could not be Bound even by Act of Parliament.*

This could not be done, without Aſperſing and Blackening the contrary Principles, which they did plentifully, and carried their Invectives ſo far, as to Aſſert, *That what Danger might happen to this* Proteſtant *Church, muſt neceſſarily come from the* Proteſtant *Diſſenters, and not from Popery, or a Popiſh King; for ſuch a Popiſh King, as the Duke would be, would be a Bleſſing very deſirable.*

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The Preachers carried the Point further, and, in Imitation of the Preachers in the Reign of King *Charles* I. they made the *Pulpit*, *a Bar*, at which to Plead againſt the Liberty and Property of the Subject. Husband's Coll. 559.

VI. To Strike at the Rights and Privileges of the Houſe of Commons, by Proſecuting Mr. *Williams*, the Speaker of the Two laſt Parliaments, for Printing, by Order of the Houſe, *Dangerfield's Narrative*, which had Charged Heinous Matters on the Duke of *York*; but this Proſecution did not happen to come in Courſe, 'till after the Demiſe of this King; for the Information Charged the Offence to be, for Printing a Libel in the Nature of a *Scandalum Magnatum* on the Duke; as appears by the Proceedings which are Entred, *Trin.* 1° *Jacobi* II. *Rot.* 1°.

SECT. XXVI.

THE Duke's Purſuit of theſe Advices, was amazingly ſucceſsful, all Oppoſition falling before him; but the two firſt Parts of the Scheme only, require a particular Account to be given of them in this Place, as follows, *viz.*

I. As to the Firſt Reſolution, The Subſtance of the *Quo Warranto* againſt the City of *London*, was, *That the King thereby required them to ſhew, By what Right or Warrant, they Claimed to be a Corporation, by the Name of the Mayor, and Commonalty, and Citizens, of the City of* London.

The Breaches which the Attorney General, for the King, Aſſigned as Cauſes to forfeit their *Being*, or Life, as a Corporation, were Two;

1. *That the City of* London *had made a By-Law, to* Levy Money *on all Perſons Coming to Sell Proviſions in the City Markets, under Pretence of Tolls, and had Levied and Collected, thoſe Rates, which were by that By-Law Impoſed*: Whereas in Fact, the By-Law was not to *Impoſe* New, but to Reduce their Antient and Uncertain Tolls, to a reaſonable Certainty.

2. *For that the City had, on the* 15*th of* January, 1680, *preſented to the King, a* Petition, *wherein they had Repreſented to his Majeſty, their* Grievances, *That the Popiſh Plot was, to Murder the King, to Subvert the Government, to Introduce Popery, to Subject this Nation to the Pope's Supremacy, to Rebuild the Old, and Found New Monaſteries, and to Reſtore the Abbey Lands to the Monkiſh Clergy, and to Extirpate the Proteſtant Religion; That divers Offenders had been Convicted and Attainted; That divers Proceedings were depending in the Parliament (which Sate on the* 15*th of* March, 1679,) *againſt the Five Popiſh Lords; That the Parliament was Prorogued, and that that Intermiſſion continued Seven Months, 'till the* 21*ſt of* October, 1680; *The Tryal and Attainder of Lord* Stafford, *upon the Impeachment in Parliament; The Proceedings in Parliament againſt the Chief Juſtice* Scroggs, *Earl* Tyrone, &c. *That divers Bills were Preparing in Parliament, for Preſervation of the King's Perſon and Government; The Prorogation on the* 10*th of* January, 1680, *'till the* 20*th Day of the ſame* January, 1680; *The Dangers, Fears, and Grievances, ariſing from theſe Diſcontinuances of the Parliamentary Proceedings; but, above all, their great Surprize at the laſt Prorogation on the* 10*th of* January, 1680, *whereby the Proſecution of the Publick Juſtice of the Kingdom, and the making the Proviſions neceſſary for the* Defence *and Security of the King's Perſon, and of his Proteſtant Subjects, had Received an* Interruption; *and that therefore they prayed the King would be pleaſed to permit the ſaid Parliament to Sit on the* 20*th of* January, *being the Day to which they were Prorogued, until, by their Counſels and Endeavours, thoſe Good Remedies ſhould be Provided, and thoſe Juſt Ends Attained; and that the City had cauſed this* Petition *to be Printed and Publiſhed, to the Scandal of the King's Government.*

Theſe Breaches being, by proper Pleadings, drawn to an Iſſue in Law, to be Argued and Debated, Whether the ſame were Offences? and if ſo, Whether they were ſuch Offences, as were *Capital*, and Puniſhable with the Diſſolution of the very Being of the Corporation?

It was Argued for the King, by Mr. *Heneage Finch*, Sollicitor General, and by Sir *Robert Sawyer*, Attorney General,

That

That the End of Creating Corporations in Cities and Boroughs, was to Promote and Encourage Trade; That the King, in Creating them to be Corporations, Granted to them the Office of Magiſtracy, *to Govern (in his Stead) the People of that particular Place or Corporation; which* Government *could not be Exerciſed, until By-Laws were firſt made, to be the Rule of their Government: The Power therefore of making By-Laws, was incidently Granted to Corporations, and paſſed by Implication in the Grant or Creation, with a* Tacit Condition, *or* Ita quod, *That thoſe By-Laws ſhould not be contrary to the General Laws of the Land.*

That the Power of Corporations, in Relation to Magiſtracy, *being Derived out of the Supreme* Regal Magiſtracy, *they could not do more than the King himſelf, whoſe Power was the Original; and that as the King, although Supreme Governor, could not make a Law, to* Impoſe *and Levy Money upon the Subject, ſo neither could the Mayor, Aldermen, and Common-Council of* London.

That the Rights *of a Corporation in Point of* Magiſtracy *were of human Inſtitution; and, therefore, as to their* Birth, Form, Extent, *and* Limits, *they were wholly Directed by its Creator; and that whatſoever is made and formed, by the Policy of Man, may, by the Law of Man, be alterable.*

That the Antient Kings, when they Formed *the Corporation of* London, *ſhap'd it after the Manner of the Supreme* Legiſlature *of the Kingdom, to conſiſt of a Mayor, as the Head, and of Aldermen and Commons, as the Body, after the Image of the Parliament of* Britain; *and therefore their Original Inſtitution was, That the whole State and Body of the Citizens of* London *ſhould be Repreſented by a Mayor, Aldermen and Common-Council.*

That the Corporation, and the Grant to it, of the Office of Magiſtracy, *to Govern, Carried in it an* Original Truſt, *and a* Tacit *Condition to Govern well, and the Greater the* Truſt, *the Stricter was the Condition; for the King* Truſts *them with the Local and Special Government of that particular Diſtrict, upon Account of, and Subordinate to, the Publick Government of the Kingdom; and that therefore the Breach of the* Publick Truſt, Finch, 19, Sawyer, 20, 21, 22, 25.

Truſt, *Repoſed in them, at their Original Creation, and of the* Tacit *Condition Annexed to that* Truſt, *was a Forfeiture, and was a good Cauſe, to ſeparate the* Politic Capacity, *from the* Natural; *For whenſoever the Law Creates a* Truſt, *the ſame Law Provides a Remedy, if the Truſt be* Broken, *for putting that Truſt into ſafer Hands, becauſe there is a* Ceſſer, *and a Determination of the Truſt, in the Hands of him that acts directly contrary to it.*

And all theſe General Propoſitions were true; but when the particular Breaches came to be Argued upon, the King's Council ſeemed to fail.

For, as to the firſt Breach, Touching *Levying Money* upon the Market-People, it was Argued for the King, *That the City's Offence did not lie in Taking the Money of the Market-People, but in* Aſſuming a Power *to make a Law, to Raiſe Money upon the Subjects; and that it was the Manner of Levying, and not the* Quantum *of the Money Levyed, that made the Offence that was Charged upon them.*

It was Argued for the City, by their Recorder, Sir *George Treby*, and Mr. *Pollexſen*, *That Tolls in the Markets, for Stallage and other Conveniencies that were Provided at the City's Charges, were due by Law; That the Tolls being Antient, the ſame were Uncertain, and many Differences had happened between the City Officers, and the Market-People, about the Specifick Tolls; and that the By-Law was made, to reduce the old Tolls to a Certainty, and to prevent the Miſchiefs that aroſe from Uncertainty; and therefore that Act of Common-Council, was not an* Uſurpation; *but Tended directly to good Government.*

But, afterwards, it Appeared, That this Pretence, of a Breach of Truſt, to make a Forfeiture, was merely Specious; for after the King had obtained Judgment againſt the City, his Majeſty himſelf, by thoſe Commiſſioned under him, Exacted and Collected the ſame Rates for the Tolls, which the City had, by their Act of Common-Council, Aſcertained.

II. When the Second Breach, touching the City's *Petition*, came to be Argued, the King's Council ſeeemed to lay the whole Streſs upon Clamour only, without any Real Subſtance; for it was Argued for the King, *That the* Petition *did, in Effect,*

Effect Adjudge and Publiſh to the People, That the King was *Unfit* to govern, *becauſe it Alledged*, That by the Prorogation, his Majeſty had **Interrupted** the Publick Juſtice, and the Making neceſſary Proviſions for the Safety of himſelf, and of his Proteſtant Subjects; *Whereas the Power of Proroguing Parliaments was a Part of the* Kingly Office, *and the Exerciſe of it, was a Point of as* **high Truſt** *as any; and that the Imputation of* **Interrupting** *the Publick Juſtice, Imported great Scandal to a common Magiſtrate,* Intruſted *with the Adminiſtration of Juſtice, and much more to the Supreme* Magiſtrate; *and eſpecially, if it was Charged upon him, for Uſing that Lawful Power of Proroguing, that was Veſted in him; That the Words* Nulli Negabimus aut Differemus Juſtitiam, *are not only the Words, but the Duty of every King.*

The *Delay* of Juſtice, which Imports only an Omiſſion, is a great Imputation; but *Interruption* is a Greater; becauſe that Imports ſome wilful Act, whereby Juſtice is ſtopp'd; but however, both are Temporary Denyals of Juſtice.

That the principal Attributes, which the Law makes neceſſary for Princes, are, Juſtice, Mercy, *and* Wiſdom, *and theſe were every one of them, by this Petition, Impeached; His* Juſtice, *by his Interrupting the Courſe of it; His* Wiſdom, *for not taking Care of his own Perſon, or by not Diſcerning the Danger he put himſelf into, by the Prorogation; and that his* Mercy *was Impeached, with Cruelty, in Screening his Popiſh Subject, and Expoſing, to imminent Danger, his Proteſtant ones.*

It was Argued for the City, by their Council, Sir *George Treby* their Recorder, and by Mr. *Pollexfen*, *That the* Conſtitution, *and the Law of the Land, had given to the Subject a* Right *of Petitioning, and of Acceſs to the Supreme Governor, to Repreſent to him, their Grievances, and to pray a Redreſs of them; and that the ſame Law gave them alſo a* Right *to State in their Petitions, thoſe* Facts *and* Reaſons, *which Cauſed their Grievances, provided thoſe Facts were true.*

That the Grievances Complained of, were the Dangers Ariſing from the Popiſh Plot, and from the dangerous Conſpiracy which the Petition deſcribed.

The Facts Recited in the Petition, were *Unqueſtionably true*, and even Confeſſed by the King's Council; The City Admitted the King's Power, to prorogue Parliaments, and did in no Sort Queſtion it, but Affirmed it; They only Inſiſted, *That it was as true, That all their* Grievances *and Dangers, did proceed from that Lawful, but Unſeaſonable Act of the King's; And that as there was one Part of the Conſtitution, that gave the King Power to Prorogue, ſo there was another Part of the Conſtitution, that gave to the Subject an Original Right to* Petition *for Redreſs of their Grievances; and, in that Petition, to* State, *and ſhew, the Cauſes, and Reaſons of thoſe Grievances; and that therefore, to puniſh a Man, for ſhewing, in his Petition, thoſe Grievances which he deſires to be Redreſſed, and the Cauſes of them, was the ſame Thing as to Deny him the* Right *of Petitioning; and that ſuch a Denial would infer Oppreſſion, and the moſt abject Slavery; for, when Subjects are Miſuſed and Grieved, and are Denied the Liberty to complain and pray the King to Redreſs thoſe Grievances, or ſhall be Puniſhed for Petitioning againſt them, they muſt neceſſarily be* Abject Slaves.

It was, in ſome Sort, Urged, *That the* Aſſembling *of Parliaments, and permitting them to ſit and provide for the* Defence *and Safety of the Nation, was an* Original Truſt, *which the Law had Repoſed in the Supreme Governor, and was therefore a* Debt *due to the Nation; and that Petitioning for a Performance of that* Truſt, *could not be Criminal.*

Theſe Arguments were, by Standers-by, Deemed a Reaſonable and ſufficient *Defence*, for the City; but no Defence would be heard; for the Judgment was before Agreed on, and the Judges, without giving Reaſons, gave, for the King, a Capital Judgment, *viz. That the City's Franchiſe, of* Being *a Corporation, ſhould be Seized into the King's Hands*; Which was Admitted, by all Sides, to be the ſame Thing, as to Diſſolve, or Ouſt them of their Life or Being; and the King Acted as if their Being was Extinguiſhed; for he Nominated and Appointed the Mayor, Sheriffs, and Aldermen.

But when the Rage and Oppreſſion of thoſe Times was Removed, the Judgment, in this *Quo Warranto*, was, by an Act of Parliament, Condemned, as an Illegal Proceeding, and made Void;

Void; and, consequently, *Justice*, *Cruelty*, and *Folly*, were Charged upon the Prosecution, and especially upon that Enormous Breach of the Constitution, and the Law of the Land, whereby the *Right of Petitioning* was Infringed, and the Essence of the Legislature Attempted.

The Reason why the Judges gave, in this Case, a peremptory Judgment, without assigning Reasons, was, because it was Remembred, That in the Business of the Ship-Money, and other such Illegal Judgments, there happened many Impertinencies, Incongruities, and Insolencies, in the Speeches and Orations of the Judges, as Offensive and Scandalous, as the Judgments and Sentences themselves; Insomuch that, in those Times, many sober Men Departed, extremely Offended and Scandalized, with the Grounds, Reasons, and Expressions of those, who Inflicted the Censures: And therefore Silence was, in this monstrous Case, contrived, to Avoid those Inconveniencies: And, to this Matter, it may be Added, That Sir *George Jeffreys*, late Recorder of *London*, had, during his Office, made a Progress in the City's Oeconomy, like that of a Diligent Spy; for he it was, that furnished the Duke of *York*, with Materials and Instructions to form this Prosecution for Gaining the City's Charter; for to that Service, was owing his Preferment. Clarendon, Vol. I. 71, 72. Echard 144.

Whoever Reads Sir *Robert Sawyer*'s Argument in this great Case, must observe what Imperious Triumphs he Raised upon Sir *George Treby*'s Argument, as if the same were a mere Bundle of Impertinencies; But in so short a Time, as Five Years, and Six Months, Sir *George* Triumphed over Sir *Robert*, by Retorting upon him his own Arguments, and from them proved, That the Seat of his Majesty's Government was Vacant, forasmuch as the Law had Reposed a Trust in the Highest Magistracy, and had Annexed a Tacit Condition to that Trust, and had provided that the Trust, if Broken, should be put into safer Hands; the Force whereof, Sir *Robert* could never Answer: which shews, the Foundation on which he Raised his Triumphs, in Overturning the City's Rights, was Sandy and Unsound.

SECT.

SECT. XXVII.

II. AS to the Profecution of the Zealots for providing a ſufficient *Defence* againſt Popery, and Arbitrary Power, and inſiſting, *That that* **Defence** *ought to be made by the* **Exclusion** *of a Popiſh Succeſſor*; The Duke, and his *Romiſh* Cabal, carried it on with a Cruel Carnage; but it is material to take Notice only of Two Inſtances of their Slaughter, *viz.* Of Lord *Ruſſell*, and Mr. *Sidney*.

As to Lord *Ruſſell*, the Treaſon Charged on him, was a Conſpiracy to Compaſs the Death of the King; but the Proof of the Overt-Fact of that Treaſon was, *That Lord* Ruſſell *Walked in a Room in* Shepheard's Tavern, *Taſting Wine, when Treaſonable Diſcourſes and Conſultations, between Two other Men,* Rumſey *and* Ferguſon, *Paſſed at a Table in that Room*; But none of the Witneſſes could ſay, *That Lord* Ruſſell *did, by any Overt-Fact, Either in Speaking, or Conſenting to, or Approving, or Abetting thoſe Proceedings or Diſcourſes, or ſo much as that he Heard what Paſſed, but only, that he might Hear.*

This Evidence might have been ſufficient to prove Miſpriſion of Treaſon, but not High Treaſon; however, in order to Reach this Great Man's Blood, in Revenge for his Carrying up the Bill of Excluſion, the Proſecutors Confounded the very Species of Treaſons, and all Diſtinctions between High Treaſon, and Miſpriſion of Treaſon; And the Judges, who pretended to be of Counſel for the Priſoner, in Matters of Law, did not Inform the Jury of that Diſtinction; and ſo this Great Man was, by a pack'd Jury, Compoſed of Tradeſmen, who had no Freeholds in *London*, where this Lord was Tried, Convicted, Condemned by the Court, and, by the King's Warrant, Executed.

SECT. XXVIII.

AS to Mr. *Sidney*, he was Tried at the *King's-Bench-Bar*, before *Jeffreys*, Chief Juſtice, *Withens*, and *Holloway*, by a *Middleſex* Jury.

The

The Treaſon Charged on him, was, *For Compaſſing and Imagining the Death of the King*; and the Overt-Fact of that Treaſon, Charged in the Indictment, was, *That* Sidney *did Compoſe and Write a Libel*, wherein he Aſſerted thus, *The Power Originally, in the People of* England, *is Delegated to the Parliament*; *He* (Inuendo *King* Charles) *is ſubject to the Law of God, as he is a Man*; *To the People that makes him a King, inaſmuch as he is a King*; *The Law ſets a Meaſure unto that Subjection, and the Parliament are Judges of the particular Caſes thereupon Ariſing*; *He muſt be Content to ſubmit his Intereſt to theirs, ſince he is no more, than any one of them, in any other Reſpect, than that he is, by the Conſent of All, Raiſed Above any other*: *If he doth not like this Condition, he may Renounce the Government.*

But the Indictment did not Alledge one Word of *Publiſhing* the Libel.

The Proof of this Libel was made by one Witneſs only, who, by a Warrant from a Secretary of State, Broke open *Sidney*'s Study, and found there this Libel; and then as to his Writing it, that could not be proved, but by Similitude of Hands.

The King's Sollicitor General, Mr. *Finch*, Argued for the King, *That the Matter of this Libel, and the Writing of it, was an Imagining how to Compaſs the Death of King* Charles II. *and the Writing it, was an Overt-Fact of that Treaſon*; *and that* Scribere eſt Agere: He Urged with Vehemence, *That Imagining the Death of the King, is a Fact of the Mind, and is Treaſon, even whilſt that Fact Remains Covert in the Mind, although no ſuch Treaſon can be puniſhed, becauſe there is no Way to prove that Covert-Fact*; *But when once there is an Overt-Fact, that is, Any thing that does manifeſt and prove that Covert-Fact of the Mind, the Law takes hold of it, and puniſhes it, as High Treaſon.*

Collonel *Sidney* made a Strong Defence (if any Defence would have been heard): He inſiſted, *That the Libel* (if it had been well proved, which he denied it was) *did not contain any*

Matter, ſhewing any Intention or Imagination to Compaſs the Death of King Charles; For,

I. As to the Firſt Sentence, *That the Power Originally in the People of* England, *was Delegated to the Parliament*; he ſaid, *That Aſſertion was evident*; for the Parliament *Conſiſted* of the King, Lords, and Commons, and whatſoever Power was in the People (if they ever had any) was, doubtleſs, Delegated to the Parliament; or, however, if it were Queſtionable, that Poſition was no more, than what was written in the Law of *England*; for, by the Statute of 25 *H.* VIII. *cap.* 21. it is Declared, *That this Nation is free from any Man's Laws, but ſuch only, as had been Deviſed by the People, and* Originally Ordained *and Eſtabliſhed by their Conſent*; *which* Conſent *of the People, could not be given, but by their Repreſentatives, to whom they had Delegated their Power to give it in Parliament*: And further, *That this Poſition was proved by the Common* Form *of Acts of Parliament*, which runs thus, *Be it Enacted* (or made a Law) *by the King's Moſt Excellent Majeſty, by and with the Conſent of the Lords Spiritual and Temporal, and Commons, in this preſent Parliament Aſſembled, and by the* Authority *of the ſame* (i. e. The ſame Parliament, of which the King is a Part) for the Word *Authority*, naturally Imports a Derivative Power, proceeding from ſome *Original*; And as to the Commons, their *Authority* is Viſibly, and Literally, Derived from their Conſtituents the People, who Elect and Impower them; For the Original Writ of Summons, and the Law or Conſtitution, require the People to Elect and Impower their Repreſentatives, to do ſuch Things in Parliament, as ſhall be requiſite to be done, touching the State of the Kingdom, and to pay them Fees for their Service: And as to the King, and the Lords, their Authority muſt therefore neceſſarily be Derived from the ſame Conſtitution, and the Law of the Land; for to Derive one Part of a Joint *Authority* from one Original, and another Part of that Joint *Authority*, from another Original, is not Conceptible.

Sidney Argued, *That all the Rights, Powers, and Prerogatives of the King, are Derived from the Laws of the Land, and deemed as Part thereof*; but no Law *of the Land was ever Made, or Ordained, but what was* Deviſed *by the People, and* Originally Ordained *by their Conſent*: Ergo; *All the King's* Power

Power *was Derived from thoſe Laws ſo Deviſed, and ſo Ordained.* He Urged, *That this Argument was proved by the ſaid Statute of* 25 H. VIII. wherein it is Declared, *That the King, Lords, and Commons, in Parliament Aſſembled, do* Repreſent *the whole* State *of the Realm; and that They only, have* Power *to Make and Alter Laws*; And, conſequently, that Statute hath Excluded all *Notions* of other Eſtates, or other Powers.

Note, The Truth of this Poſition Appeared and Prevailed juſt at the End of Five Years; for when the People had, for Breaches of the Original Truſt, Repoſed in the Kingly Office, Withdrawn, or Taken back, their *Power*, The King, or his furious Miniſter *Jeffreys*, had none Left.

As to the Clauſe, *That the King is ſubject to the Law of God, whether as a Man, or a King*, he hoped, that there was no Crime in that Aſſertion.

As to that Clauſe which ſays, *That a King is* ſubject *to that People which makes him a King, inaſmuch as he is a King*;

Sidney Inſiſted, *That that Clauſe was Nonſenſe; for to ſay*, That a People ſhould make a King, or Supreme Governor, to Govern them; *and yet to ſay*, That he muſt be Subject to, or be Governed by them, *was a ſenſeleſs Contradiction in itſelf, and of no Force, and ought to be Treated as ſuch.*

As to that Clauſe which ſays, *The Law ſets a Meaſure to that* Subjection;

Sidney Inſiſted, *That the Meaning of thoſe Words was Ambiguous and Uncertain; for, if it meant the* Subjection *of the People to the King, then it was true; for the Law obligeth Obedience to the Supreme Governor; and if the People* Diſobey *in any Thing, where the Law doth not oblige, it is no Crime*; For where there is no Law, there can be no Tranſgreſſion; *and if thoſe Words muſt be ſtrained to mean a King's* Subjection *to the People, it was a Non-entity, and Nonſenſe, and could mean Nothing; for there being no ſuch* Subjection, *there was not, nor could be, any Law to* Meaſure it.

As

As to that Clauſe which ſays, *That the Parliaments are Judges of the particular Caſes thereupon Ariſing, He* (meaning King *Charles*) *muſt be content to ſubmit his Intereſt to theirs, ſince he is no more, than any one of them, in any other Reſpect, than that he is, by the Conſent of All, Raiſed above any other* (*i.e.* above All);

Sidney Inſiſted, *That the Connection of this Clauſe to the laſt, is ſo Cloſe, that this muſt be Senſe or Nonſenſe, according to what* That *is taken; for, doubtleſs, the Supreme and Ultimate* Judicature *in all Caſes, Ariſing upon Points of Law, and Proſecutions of the Subject, touching his Subjection, is, by the Law, fixed in the Parliament, of which the King is a Part.* And as to the King's Submitting his Intereſt to the Intereſt of his People, *Sidney* Inſiſted, *That it was Impoſſible that a King of* England *could have any Intereſt ſeparate from, or contrary to, That of his People, or that he could have any particular Intereſt which could be put in Competition with the General Intereſt of his People; but that if he had, it could not be an Intereſt in his political Capacity, as he was King, but ſome other private Intereſt; and therefore it could be no Crime to ſay, ſuch a particular Intereſt ought to be Submitted.*

As to that Clauſe which ſays, *If he* (meaning King *Charles*) *doth not like this Condition, he may Renounce the Government; but if he receive it upon that Condition* (as all Magiſtrates do the Power they Receive) *and Swear to perform it; he muſt Expect the Performance will be Exacted, or Revenge taken by thoſe whom he hath Betrayed;*

Sidney Inſiſted, *That all the Words of the Book contained no more than General Speculations of Government, and free for any Man to think of, and write down, eſpecially ſince the ſame are written in the Parliament Rolls, and in the Statute-Laws; For in them it is written,* That a King of *England* is the Supreme Magiſtrate, and Intruſted with the Executive Part of the Laws, to which *Royal Truſt* there is a Tacit Condition Annexed, to Enforce the Performance of it; and that he, when he Aſſumes the Government, Accepts it upon that Truſt, and with that Tacit Condition to perform it, by Entring into the Original Contract, and taking his Coronation Oath: *And that*

that All theſe Notions of Government are written in the Proceedings againſt the Kings, John, Henry III. Edward II. Richard II. *and* Henry VI. *and their Miniſters; or, however, that the Treaſon, in this Caſe, ought to be manifeſt, poſitive, and direct, to compaſs the Death of this preſent King* Charles II. *in particular, and not to be Applied by Conjectures and* Inuendo's, *to that End or Purpoſe; for elſe the Statute of* 25 E. III. *to Reduce Treaſons, to the Treaſons there Expreſſed, in Order to confine the Judges to thoſe Species's, was made in vain.*

Sidney Argued, *That if a Writing ſays,* That the Power Originally in the People of *England,* was **Delegated** to the Parliament; or, that the Law ſets Meaſures to Subjection; or, that the Parliament are Judges, of particular Caſes Ariſing upon the Law; or, that a King muſt ſubmit his particular Intereſt, to the general Intereſt of his People; or, that if a King Diſlikes the Government of *England,* or the Truſts or Conditions of the Kingly Office; *he may Renounce it*:

It would be Conjectural and Unjuſt to apply, by Inuendo's, *theſe General Aſſertions concerning Monarchical Government, as Overt-Facts to prove the Writer was Imagining and Compaſſing the Death of King* Charles II. *for then no Man can think or write of Things done by our Anceſtors, in Defence of the Conſtitution and Freedom of* Britain, *in former Times, without the Danger of Conjectures and* Inuendo's *to mean the preſent Times.*

Collonel *Sidney* made a Defence from the Words of the Statute of Treaſons of 25 *E.* III. which are theſe; *Foraſmuch as divers Opinions have been, in what Caſe Treaſon ſhall be ſaid, and in what not; It is Declared, it ſhall be Treaſon, when a Man doth Compaſs or Imagine the Death of the King, and be Attainted by Proof of ſome Overt Fact thereof,* &c. He Argued, *That this Affirmative Declaration being made to Reſolve Doubts, doth infer the Negative, that no Covert-Facts ſhall be ſaid or Adjudged Treaſon*: He therefore Argued, '*That the Word* 'Overt-Fact, *was Inſerted as the Oppoſite to a Covert-Fact;* 'and *ſince there might be Facts of both Sorts, the Statute made a* 'Diſtinction *between them, as the* Membra Dividentia; *but the* 'Overt-Facts *only, were made Treaſon, and Covert Facts are not* 'made *Treaſon.*

He Inſiſted, *That the Word* Proof *was Inſerted as the Oppoſite to* Conjectures; *and therefore the Words* Scribere eſt Agere *is not a true Rule, but* Scribere & Publicare eſt Agere, *was a true one; That, in this Caſe, there was no Publication, no Opening, or Imparting the Writing to any other Perſon; but, on the contrary, it was a Covert-Fact, never Opened, or Imparted to any Perſon; and was Lock'd up in his Study, and lay there as Covert from any Man, as if it were Lock'd up in his Mind.*

He Argued, *That the Conjectural Proof; That the Writing in Queſtion, was like another Writing, which* Sidney *had really written; and from thence to conclude and believe, That the Writing, in Queſtion, was written by him, was Conjectural, and not a poſitive, clear Proof of a Fact, to take away his Life.*

Sidney Argued, *That there was no Proof of the* Time *when the Paper, in Queſtion, was written; and ſince the Time did not Appear, that it was reaſonable to preſume, that That Paper was written before the Act of Oblivion, in the Year* 1660, *or, at leaſt, before the Act for a General Pardon, in the Year* 1673, *was paſſed; becauſe, when Queſtions, in Caſes of Blood, ſtand in* Equilibrio, *or Equidubious, the moſt favourable Conſtruction, in Favour of Life, ought to be preferred before a Conjectural Conſtruction to take away a Man's Life.*

Sidney's Defence was, in the Opinion of Standers-by, ſufficient; but *Jeffreys*, without Troubling himſelf with any Part of the Defence, Declared, *in furore, That Conjectural Proof was ſufficient; and that therefore the written Paper, in Queſtion, was, by Similitude of Hands, well proved; and that the Matter of it was to compaſs King* Charles's *Death, and that it was to be preſumed, to be written lately; and that it could not be otherwiſe Underſtood, becauſe* Sidney's *Principles led him to it. Sidney* thereupon was, by a pack'd Jury of Men, that were not Freeholders in *Middleſex*, found Guilty of High-Treaſon, and Condemned, and Executed.

SECT.

SECT. XXIX.

THE Attainders and Executions of theſe two Great Men, when the Law, and Juſtice were Reſtored, were, by Act of Parliament, Condemned as Unjuſt and Partial, and were Annulled and Made Void, as Illegal Acts of Arbitrary Power.

Theſe bloody Proceedings, had the projected Effect; the King's Conqueſts over the Nation's Liberties, were carried on with Rapidity; the People were Intimidated; the City of *London* Subdued, and Mayors and Sheriffs were Impoſed; all other Cities and Boroughs, offered up their Charters and Liberties as a *Sacrifice* to the King's (or rather the Duke's) Abſolute Will and Pleaſure; The **Whig Party**, and their Power and Influence, who, in Fact, were the Party moſt Jealous of the Loſs of the National Freedom, and of the *Original Form* of Government, and for that Reaſon, had been Immeaſurably Burleſqu'd, as Factious and Seditious, were ſo Broken and Diminiſhed, that hardly any ſuch Thing ſeemed to Live, *or have a Being*, and the King's Power (or rather the Duke's) was in its higheſt *Exaltation*. But theſe Arbitrary Proceedings did (as it proved) Treaſure up Diſcontents and Averſion, againſt the Day of Deſertion and Expulſion: However, in this Height of the Duke's Victories and Triumphs, he cauſed a Declaration, or rather an Exultation, of his Glory, to be Drawn up in a Pompous Stile, and Printed, wherein it was mentioned, *That the King's late Succeſs in Attaining the Power he was poſſeſſed of, could be Equalled only by that of his Reſtoration; That in his Proceedings to this Station, he had met with ſo many Teſtimonies of Love and Zeal, from all Degrees of Men in the Nation, that though ſome had ſwerved, yet his Indignations and Reſentments, were Overwhelmed by the Comfortable Remembrance of the far Greater, and Better, Number of thoſe, who had ſtood by him; That he had Reaſon to Acknowledge, the Main Body of the Nobility and Gentry, had ſo done; ſo had the Sound and Honeſt Part of the Commonalty; ſo the great Fountains of Knowledge and Civility, the Two Univerſities; ſo the Wiſeſt and moſt Learned in the Laws; ſo the whole Clergy, and all the Genuine Sons of the Church of* England;

That

That his Majeſty could not forbear to let the World know, what intire Satisfaction he took in that moſt Material of all his Atchievements, whereby the Monarchy had Gained the moſt Conſiderable Advantage, viz. *That ſo great a Number of Cities and Corporations, had ſo freely Reſigned their Local Privileges and Charters, leſt the ſame ſhould at any Time prove Inconvenient to the Prerogatives of the Crown.*

This, his Majeſty Declared, he Eſteemed as the peculiar Honour of his Reign, being ſuch as none of the moſt Popular of all his Predeceſſors, could have promiſed to themſelves, or hoped for.

His Majeſty, therefore, after the Manner of an Eaſtern Monarch, was pleaſed to ſay, *That he would ſhew the greateſt Moderation in the Exerciſe of ſo great a* **Truſt**; Declaring, *That the Crown was not only the Firſt Original, but the ſureſt Guardian, of all the People's Rights and Privileges.*

Oh Conſtitution! Into what a Degree of Contempt and Weakneſs, and into what an Abject Degree of Slavery, waſt Thou, and thy Conſtituents, ſunk and fallen! As if thou hadſt no Exiſtence, but what proceeded from one Part of thy own Inſtitutions, and that too Dependant on his Will and Pleaſure! It being the World's Wonder, that the Infatuated Willing People, did not, at this Time, Dig with their own Hands, a Grave deep enough to Bury this Conſtitution, and the Being of Parliaments.

But now, in the Midſt of all this Glory, the Time was come, that King *Charles* muſt Taſte the Fruit of his own Incredulity, and the Nation, the Fruit of that Interruption he gave to the Parliament's making Proviſions, and a **Defence** to preſerve to him his Life, and to the Kingdom, **Safety**, from Popery and Slavery; for if the Duke of *Buckinghamſhire*, and Biſhop *Burnet*, are to be believed, the Popiſh Plot was Executed on him, and he *Periſhed* on the 6th of *February*, 1684, by Violent Means, and Popery and Slavery, with his Succeſſor, Ruſhed in upon the Nation.

SECT.

SECT. XXX.

THIS extraordinary Reign cannot be parted with, without ſome Remarks, as follow, *viz.*

I. It was wonderful, conſidering this King's Breach of the Triple Alliance, in the Year 1670, and his Treatment of his Parliaments, between that Time, and his laſt Parting with them at *Oxford*, on the 28th of *March*, 1681, and his Artful, and even Obſtinate, Evading the making Neceſſary Alliances, and Wars, and other Proviſions, to **Defend** the Nation againſt the Exceſſive Power of *France*, and the Juſt Fears of Popery: I ſay, It is Wonderful that this Reign Paſſed without Tumults, and even a General **Revolt**; but the Reaſon is plain, That the late Treatment of the Parliament, and of the Nation, by *Oliver Cromwell*, and by the Army, had Nauſeated the Underſtanding Part of *Britain*, and Created in them, an Averſion and Fear of Falling under the like Calamities and **Servitude**. Parker, 258.

II. Another Reaſon may be given, That the immediate Proſpect of the Duke of *York*'s Succeſſion, added to this King's Life, a vaſt Value, in Regard his Life was Believed to be, the only Barrier againſt the immediate Entrance of Popery; and therefore every Man's Fears were the better ſuſtained, becauſe the King's Health was looked upon as Firm and Strong, at the ſame Time when the Duke was imagined to be, of an Infirm Conſtitution.

A ſhort Notice of this King's Memory, may Cloſe the Account of his Unaccountable *Management*; No Prince ever Paſſed thorough more Dangers and Difficulties, nor ever met with more People, in thoſe Extremities, more Faithful, or more Careful of him, even to the utmoſt Hazard of their own Lives, than this Prince did; to whom, without Doubt, he made great Promiſes of what he would Do, and how he would Reward, when he came into his Kingdom; neither had any Prince a better Memory or Faculties, to Recount the Particulars

(as he often did) of his Eſcapes, or to Repreſent them as Miracles: But to deliver himſelf from the Trouble of Applications, he Reſolved to make (and did make) an equal Return to them all, which was to forget them all alike: Hiſtorians ſay, *That moſt Princes ſeem to have this Temper pretty deep in them, and to think, They ought never to Remember* Paſt *Services; but that their Acceptance of them is a full Reward*: This King, of all in our Age, Exerted this Piece of Prerogative, in the Ampleſt Manner; for he never ſeemed to Charge his Memory, or to Trouble his Thoughts, with the Senſe of any of the Services that had been done him.

Burnet, 611.

BREACHES IN THE REIGN OF KING JAMES II.

CHAP. XI.

SECT. I.

KING *James* II. was, at his Acceſſion to the Government, above 51 Years old, being an Age, when it might be expected, his Judgment in Government was *Mature*, and the rather, ſince few Princes had ever paſſed through more Viciſſitudes of Good and Bad Circumſtances.

The many and dangerous Steps his kind Brother King *Charles* had taken, in Paving the Way, not only to ſecure to this King his *Succeſſion*, but a greater *Power*, than had ever been before provided for a Succeſſor, were Extraordinary.

And

And in that Situation King *Charles* Demiſed the Government; and, doubtleſs, King *James* Reſolved, with the ſame Views, to take it up where it was left him, and to *proceed* in the ſame Deſigns, not Doubting of the ſame *Compliance*.

Burnet, 540. But before this King's Adminiſtration is entred into, it is material to repreſent the *Make* of his Mind, and his Sentiments of Government: He had Learned early from the King and Queen his Royal Father and Mother, *High Notions* of the Kingly Authority, and had Imbibed this Maxim of the Imperial Law, *That All, who in any Sort, oppoſed the King's* Will, *were, in their Hearts*, Rebels; *and that a King ſhould never* Recede, *becauſe Faction and Diſobedience would be Encouraged by Yielding*; *That the King is* above the Law, *i. e.* above the Conſtitution, *and is Unlimited*: Which Notions were Grounded on this *Logick*, That the King of *England's* Regal Power, is Equal to the *Sovereign* Power of any other King in the World; *But* other Kings, eſpecially in *Europe*, are, by Virtue of the *Imperial* or Civil Law, above the Laws in their Countries; the principal Maxim of that Law being *Quod Principi placuit Legis habet Vigorem, Ergo*, the Kings of *England* are *above the Laws* of England; but although this may be true *Logick*, in Countries where the Imperial Law preſides; it is, however, untrue in *England*.

This King had alſo Imbibed this Notion of *Royal Promiſes*, that they are to be Deemed free Donatives, and ought never to be ſtrictly Examined or Challenged; and that the People muſt leave the King to Explain his own Meaning and Intentions;
Echard. and a certain Clergyman, who had got a Hint of the King's Sentiments, preach'd up that Doctrine with great Dexterity and Fervency; and the King hearing of it, Apprehended, This was a Man for his Purpoſe, and to Encourage others to imitate, Rewarded the Preacher with a Biſhoprick, after the ſame Manner as Doctor *Manwaring* was, for Preaching a Doctrine of the like *Pravity*, Rewarded with Prelacy. This Sort of Preachers miſlead Princes, and make them believe they are Looſed from all Moral and Legal Obligations; for, according to them, the *Original Contract*, the Coronation *Oath*, promiſes, upon the *Word of a King*, &c. may be, by themſelves, Diſpenſed with,

and

and Annihilated, and that of ſuch Promiſes there can be no Breaches; all Ages have produced ſome Libertines equally Abandoned.

However, upon theſe Foundations, King *James* often ſaid, *His Father King* Charles *was* **Undone**, *firſt by his* Conceſſions, *and next by his* Omiſſions: *That his* Omiſſions *were, in not Fortifying himſelf by* Leagues *and Alliances to ſupport his Undertakings, and in omitting to provide an Army to Vindicate his Proceedings; That his* Conceſſions *were, in ſubmitting at* York *in the Year* 1640, *to Aſſemble a Parliament, when there could be no Reaſon for it,* 'till the *Scots* had firſt Retired out of *England.*

A Parallel therefore may be Exhibited, between King *James*'s Government, and that of his Royal Father; to the End it may appear in what Particulars the Son's *Imitation* agreed with his Father's Example, and wherein he endeavoured to Rectify his Royal Predeceſſor's Miſtakes, in Acquiring an Arbitrary Power in Government: And, for this Purpoſe, it may be Reminded, That King *Charles* I. **Departed** from the known Laws, to the Exerciſe of **Arbitrary** Power, in theſe, amongſt other Particulars; He *Demanded* and *Levied*, by Regal Authority, the Cuſtoms of Tonnage and Poundage, without a Grant thereof in Parliament: His Majeſty treated his Parliaments with *Imperious Speeches*: In King *Charles*'s Reign, the *Privileges* of Parliament were violated, and the Members proſecuted, and puniſhed for Matters Cognizable only in Parliament: The Right of petitioning to Redreſs Grievances, eſpecially to call Parliaments, was violated and obſtructed; the People were *oppreſſed* and grieved by the Proceedings of the High Commiſſion-Court, in Eccleſiaſtical Cauſes: King *Charles* Diſpenſed with the Laws; The *Liberty* of the Subjects Perſons was Violated by Impriſonments, without Bail or Mainprize; Exceſſive Fines were Impoſed, and cruel Puniſhments inflicted: His Majeſty had laid aſide Parliaments, and Governed without them, and was therefore troubled with the United Voice and Demand of the People, for a free Parliament.

SECT. II.

THESE being the Paternal Patterns, the Reſemblance of King *James*, the Son's Adminiſtration, and his Endeavours to Amend thoſe **Defects** wherein his Father had *Erred*, and fallen ſhort of Eſtabliſhing his Government without Parliaments, will appear from the following Inſtances;

King *James* Renewed with *France*, the *Secret League*, to introduce Popery into his three Kingdoms; and, in order to that Enterprize, to *begin* with ſubduing *Holland*, or, at leaſt to reduce it to Confuſion, and a ſubmiſſive Dependance: This Conſpiracy, as a moſt Religious and Glorious Undertaking, was Imparted, by the *Engliſh* Ambaſſador at *Rome*, to Pope *Innocent* XI. and by him to the Emperor, and by him to the Prince of *Orange*, who Diſcovered the whole Scheme to the States of *Holland*: This being the ſecret Deſign, it may, from the whole Conduct of this Reign, be inferred, that King *James* did, in his own Mind, Form theſe Deſigns:

ECHARD.

I. *To* **Depart** *from the known Laws, and from the* Original Form *of Government, and to make his Will his Law in Government.*

II. *To introduce the Popiſh, and Extirpate the Proteſtant Religion, in order to which grand Atchievements, it was neceſſary to take theſe Introductory Steps,* viz.

1. *To Declare and Pretend at Firſt, and even to* ſwear *the direct contrary, and afterwards;*

2. *To wipe off the Blemiſhes which the Popiſh Plot had fixed on his Majeſty, and on the Papiſts, by the moſt ſevere Puniſhments that could be Invented and Inflicted on the Witneſſes and Promoters of that Proſecution; although that Proceeding ſhould invade and ſhake the Foundation of* Parliamentary *Rights and Privileges.*

3. *To puniſh the Writers againſt Arbitrary Power and Popery.*

4. *To*

4. *To aſſume a Power to* Diſpenſe *with* (*i. e.* to Unmake) *all the Penal Laws touching Religion.*

5. *To* Introduce *into the Army*, Popiſh *Officers*, *into Courts of Juſtice*, Popiſh *Judges*, *into the Privy-Council*, Popiſh *Counſellors*, *and into Colleges in the Univerſities*, Popiſh *Heads and Fellows*; *and*, *by Degrees*, *to* Root *out the Proteſtant Religion*, *and Eſtabliſh the* Popiſh.

In Purſuance of theſe private Reſolutions, King *James*, immediately after his moſt Kind and Affectionate Brother's Death, in a Speech to the Privy Council, which he ſoon after Repeated from the Throne, to his firſt Parliament, deliver'd theſe Words;

I ſhall make it my Endeavour to Preſerve this Government, *both in Church and State, as it is now by Law Eſtabliſhed: I ſhall always take Care to* Defend *and Support the Church of* England: *As I ſhall never* Depart *from the Juſt Rights and Prerogatives of the Crown, ſo I ſhall never* Invade *any Man's Property: I ſhall go as far as any Man, in Preſerving this Nation, in all its* Juſt *Rights and Liberties.*

This Speech, at the Inſtance of the Privy Council, was, by the King's Orders, forthwith Printed and Publiſhed; which being laid as a Foundation (as the People imagined) of his intended Government, there may be properly obſerved, a *Parallel* between the Behaviour of the Lords and Commons, to King *James*, and the Demeanor of the Lords and Commons, to King *Charles* I. in the *Sequel* of this King's future Proceedings.

Within three Days after, King *James* II. in Imitation of his Royal Father, Iſſued out his Proclamation, Commanding the Cuſtoms of Tonnage and Poundage, and other Subſidies, which had been granted to the late King *Charles* II. for his Life only, and no longer, to be Demanded, Exacted, and *Levied*, without a new Grant thereof in Parliament.

The next Step was, to wipe off thoſe Blemiſhes and Prejudices, which the Papiſts, by the Diſcovery of the Popiſh Plot, had ſuſtained; for which End, Dr. *Oates* and *Dangerfield*, were, with great Rage and Fury, Proſecuted and Convicted of Perjury, in their Evidence about that Plot, as if that Plot, the Murder

Murder of Sir *Edmund Bury Godfrey*, and *Coleman*'s Letters, were all *Fictions*, and mere Deluſions; And, accordingly, the Whippings with which they were Treated, were ſo Cruel and Barbarous, as cannot be Equalled with any thing before done in *England*, except the Barbing the Ears, and Branding the Faces of thoſe Gentlemen, *Prynn*, *Burton*, and *Baſtwick*, mentioned in Page 362.

SECT. III.

ANOTHER Step, wherein this King Imitated his Royal Father's Example, was the Proſecuting, and Exceſſive Fining, *William Williams*, Eſquire, (afterwards Sir *William Williams*, Baronet,) for Licenſing *Dangerfield*'s Narrative, in the Reign of the late King *Charles* II. to be Printed and Publiſhed, whereby this King, then Duke of *York*, was Charged with Plots and Conſpiracies of a *Black Complexion*: The Information Charged Mr. *Williams* with this Matter, as an Offence only, in the Nature of a *Scandalum Magnatum*, againſt the Duke of *York*, then a Subject; To which Information, Mr. *Williams* Pleaded, to the Juriſdiction of the Court of *King's-Bench*,

That *Dangerfield* was a Witneſs of the Popiſh Plot, and had Delivered in a Narrative to the Houſe of Commons, containing his Evidence, relating to the Duke of *York*'s being concerned therein; and that the Houſe of Commons *Ordered* the Narrative to be Printed and Publiſhed; and that Mr. *Williams*, being then Speaker, did, by Virtue of that Order, Licenſe the Printing that Narrative; and that therefore the Offence Charged on him, was not his Act, but the Act of the Houſe of Commons, and was Cognizable only in Parliament, and therefore demanded the Judgment of the Court, Whether they would Aſſume a Juriſdiction to *Hear* and *Determine* the Matter of this Proſecution? Upon which Plea the Attorney-General Demurred; and when the Pleadings were Opened, in order to be Argued, the King's Council taking an Exception to the *Form* of the Plea, the Court prevented them, ſaying, *They would not Debate the* Formality *of ſuch an Idle, Inſignificant Plea*; but called on the Defendant's Counſel, to ſhew what they had to ſay, as to the Subſtance; Whereupon Mr. *Pollexfen*, of Counſel for Mr. *Williams*, began, *The Court of Parliament*, &c. But the Chief Juſtice *Jeffreys*, *in furore*, ſaid, *A Court do you call it? Can the* Order of

Shower's Rep. 471.

of the Houſe of Commons Juſtify this Scandalous, Infamous, Flagitious Libel, &c.? Mr. *Pollexfen* then ſaid, *I have no more to ſay*, &c. And ſo the Court gave Judgment for the King: And afterwards, in the Year 1686, Mr. *Williams*, the **Speaker**, was Fined 10,000 *l.*

And theſe Proceedings are Entred on Record, as of *Trinity Term, Primo* of King *James* II. *Rotulo Primo.*

Thus was the Parliament, and its Privileges, Treated, in a Manner, worſe than King *Charles* I. Treated them: Inaſmuch as this Stroke at the *Speaker*, was a Stroke, not at Single Members, but at the whole United Body of the Commons of *England*; Which is no ſmall Evidence, that this Chief Juſtice Apprehended, he ſhould ſee no more Parliaments, or, at leaſt, no more Free ones.

Soon afterwards, the Writers againſt Arbitrary Power, and Popery; to wit, Mr. *Samuel Johnſon*, commonly called *Julian Johnſon*, who wrote an Addreſs to the Proteſtants in the Standing Army at *Hounſlow Heath*, Encamped there, to Support the Diſpenſing Power, and the High Commiſſion Court; wherein Mr. *Johnſon* Expoſed the Dangers to the Conſtitution and Freedom of *England*, from the Illegality of that Service; and alſo Mr. *Baxter* came under the Implacable Rage of this Reign: Mr. *Johnſon* was Whipp'd more Inhumanly, than *Oates* and *Dangerfield*; and Mr. *Baxter* was Proſecuted, and Exceſſively Fined.

SECT. IV.

THE Wretched Attempt of the Duke of *Monmouth*, becomes memorable only in the Cruel Shedding of Blood, after the Suppreſſion of it; The Manner and Quantity of which, Exceeded all the bloody Proceedings, in the ſeveral Viciſſitudes between the Houſes of *York* and *Lancaſter*.

This Invaſion (Lame as it was) gave King *James* the Opportunity to Raiſe, and the Pretence to Keep, a *Standing Army*, wherein his Majeſty did, in open Violation of the Act of Parliament Diſabling and Excluding from all Places of Truſt, the *Roman Catholicks*, nevertheleſs, Imploy and Intruſt as Colo-

nels and Captains, many Papiſts; which Army, Commanded by ſuch Officers, Created Fears and Apprehenſions, that were likely, in the Approaching Seſſion of Parliament, to occaſion Heats and Expoſtulations.

The Second Seſſion of this King's Firſt Parliament, was Opened on the 9th Day of *November*, 1685; At which the King, Treading in the Steps of his Royal Father, did, from the Throne, Declare himſelf, in Relation to *Monmouth*'s Rebellion, in theſe Words;

That there is nothing but a good Force *of well Diſciplin'd Troops, in Conſtant Pay, that can Defend us from ſuch as are Diſpoſed to Diſturb us: My Concern, therefore, for the Safety of my Government, made me think it neceſſary to Encreaſe the Number, to the Proportion I have done* (which was to 15000): *For the Support, therefore, of this great Charge, which is now more than Double to what it was, I ask your* Aſſiſtance.

Let no Man take Exception *that there are ſome Officers in the Army, not Qualified according to the late Teſts* (Acts of Parliament): *The Gentlemen, I muſt tell you, have approved the Loyalty of their Principles, by their Practices; and I will Deal plainly with you, That I will neither Expoſe them to Diſgrace, nor myſelf to the Want of them, if there ſhould be another Rebellion to make them Neceſſary.*

This ſolemn Declaration from the Throne, in the Face of the Kingdom, then in full Parliament Aſſembled, was looked upon as Genuine Plain Dealing; it Awakened the Drowſy People, and filled their Minds with Conviction, that King *James* had Retracted his firſt Speeches, to his Privy Council, and to his Firſt Parliament; had Renounced the Original Form of Government, and Aſſumed a Power to Diſpenſe with, or rather Diſannul, the known Laws, and to Govern by Foreign Laws; and had Reſolved to Avow his Adminiſtration, by a *Standing Army*; All which was Inconſiſtent with the Truſt Repoſed in the Regal Office; And yet he expected, that the People (whom his Brother had Reduced to the Tameneſs before mentioned) would Aſſiſt and give him Money, *thus to Inſult them.*

This Speech produced in both Houſes, Remarks which the King was not able to Anſwer, otherwiſe than by Diſmiſſing their

their Sitting at the End of Eleven Days, without having done any manner of Buſineſs.

SECT. V.

THE King's future Steps, after this Prorogation, were gaz'd at, as no other than as ſo many Emanations of his Arbitrary Will, until the Meaſures of his Miſgovernment became full; for the King Avowedly **Departed** from the known Laws, and Aſſumed a Power above them, making his Will **his** Law in Government.

The next Acts of this King's Adminiſtration were, the Making three *Popiſh Judges, viz. Allibone* of the *King's-Bench*, *Milton* of the *Common-Pleas*, and *Ingleby* of the *Exchequer*, and the Admitting four *Popiſh Lords, viz.* the Earl of *Powis*, and the Lords *Arundel*, *Bellaſis*, and *Dover*, and after that, Father *Peters*, a Jeſuit, into the Privy-Council; and to Enable theſe Judges and Privy-Counſellors, to Execute thoſe Offices and Places, the King granted them Diſpenſations and *Powers to Break* thoſe Laws, which made them Uncapable to hold them: But becauſe theſe Judges and Privy-Counſellors were as Uncapable to hold thoſe Places in the Courts of Juſtice and in the Council, as were the Popiſh Military Officers in the Army, the Common Doctrine induſtriouſly ſpread at Court, was, *That the King's Power to* Diſpenſe *with* (*i. e.* to Unmake) *and Vary the Laws*, was Law, meaning the Imperial or Civil Law; for it muſt be owned, That by that Law, in Countries where it preſides, the King was the ſole Legiſlator, and had in him the whole Power to make new Laws, and to alter old Ones; there being no Difference between the Power that makes the New, and the Power that alters the Old: The Law itſelf, had Enacted the Incapacity of the Officer to hold or enjoy the Office; and the Penalty is impoſed on the Perſon who preſumed to hold or Execute an Office, of which he was made Uncapable, contrary to this Law; therefore the Penalty is but Part of the Law.

In Order therefore, to have this Diſpenſing Power paſs for Law, King *James* did, as the King his Father had before done, in the Buſineſs of Ship-Money, irregularly, and prepoſterouſly Engage the Judges to prejudge the Caſe, and agree the Judgment, That his Majeſty might, by Law, **Diſpenſe** with (*i. e.* Alter Clarendon, Vol. I. 133.

Alter and Unmake) all the Penal Laws againſt the Diſſenters; and this Opinion was ſubſcribed by all the 12 Judges (except Sir *Thomas Street*, one of the Judges of the *Common-Pleas*); and in order to Eſtabliſh this Diſpenſing Power, as a Standing Rule of Law to bind all Men, a **Mock Cauſe** was framed for one *Godden* a Coachman, againſt his Maſter Sir *Edward Hales*, a Popiſh Colonel of a Regiment of Soldiers; wherein *Godden*, as Informer, brought his Action of Debt, upon the Teſt-Act of 25 *Car.* II. *cap.* 2. for the Penalty of 500 *l.* as a Forfeiture for the Colonel's holding his Office, without Qualifying himſelf, by Receiving the Sacrament, *&c.* which had, for Want of that Qualification, made him Uncapable to hold or Enjoy that Office; and, moreover, had given to the Perſon who would ſue for the ſame, a Penalty of 500 *l.* for holding the Office after the Incapacity incurred.

To which Action, Sir *Edward Hales* pleaded in Bar the King's Diſpenſation under the Great Seal of *England*, whereby the King granted to Sir *Edward*, Power and Licence to Break the Law made by the Teſt-Act, *i. e.* had granted to him a Capacity to Hold, Enjoy, and Execute that Office of Colonel, without Receiving the Sacrament, or Taking the Teſt, *Non Obſtante* that Statute: Upon which Plea the Plaintiff *Godden* Demurred.

This Demurrer brought the Point in Queſtion to be Argued, *Whether the King could Diſpenſe with that Statute-Law, or with the Penalty Impoſed by it, or not?*

It was Argued by the Counſel, for the Defendant Sir *Edward Hales*, in Maintenance of the *Diſpenſing Power*, *That where Statutes concern Government only, and where no particular Man can ſay, he receives a Perſonal Damage by the Breach of it; Offences againſt ſuch Laws, can be only to the King's Wrong and Damage, in his publick Capacity, as he is the Supreme Governor; and therefore the King may Licence the Non-Obſervance of ſuch a Statute, becauſe he, or any one, may Diſpenſe with his own Wrong: That although an Offender againſt ſuch a Statute may be Indicted for the Breach, yet the Suit muſt be Proſecuted in the King's Name; and he may* Defend *the Offender, by Granting a* Noli Proſequi (*i. e.* an Order to Ceaſe the Proſecution) *ſo that the King's Power over ſuch a Statute, is of ſuch a Nature, That he may Direct the* Uſe or Diſuſe of it,

as

as he, in his Diſcretion, ſhall think it Uſeful to his Government; and that the Teſt-Act is a Law which concerns Government only, and therefore falls under the King's Power to Order it how he pleaſeth.

It was Argued for the Plaintiff *Godden*, againſt the Diſpenſing Power, *That the People are the Objects of Government; and that Laws are made principally for the Safety and Welfare of the Governed; That the People of* Britain *are free from all Manner of Laws, but ſuch only, as they* (Excluſive of the King) *ſhall Deviſe and Chooſe to be Governed by; They only can introduce them into Parliament, where the ſame are to be made and paſſed into Laws, by the joint Authority of the People's Repreſentatives, who are the King, the Lords, and the Commons in Parliament Aſſembled; That the King as Supreme Governor is Intruſted as a Truſtee for the People to Execute thoſe Laws for their Benefit, but is not Truſted with a Power to Execute, or not to Execute them at his Pleaſure, much leſs with any Power over the Authority that made them, ſo as to Diſpenſe with, or Unmake them, becauſe the People are Intereſted in them, and in the Truſt to Execute them; but ſuch a Power as is Contended for, would cut up by the Roots the Authority of all the National Laws; for the ſame Authority that made the Law in Queſtion, made all the Reſt; ſuch a Conſtruction therefore would be to make the Laws Uſeleſs, and impower the Prince to make his Will his Law in Government; That the Non-Obſervance of the Statute in Queſtion, can be no Wrong or Damage to the King, when the Breach is by him himſelf Authorized; but the Breach muſt Wrong and Damage the People, becauſe they, for their own Safety, againſt a Popiſh King, Deviſed it; and the ſame was, by their Conſent and joint Authority, Ordained; and therefore the King could have no Power to Invalidate ſuch a Law.*

Upon theſe Arguments, the Judges of the Court of *King's-Bench*, *viz. Herbert* Chief Juſtice, *Holloway*, *Withens*, and the Popiſh Judge *Allibone*, Acted the Parts of Strangers to this Conſtitution, and Reſolved (as they ſaid, with the Concurrent Opinion of all the other Judges, except *Street* and *Powel*) theſe four Points to be the Law of *England*, *viz.*

1. *That the Kings of* England *are Abſolute Sovereigns.* 2. *That the Laws of* England *are the King's Laws.* 3. *That the King hath Power to Diſpenſe with all Laws, touching*

Government, whenever he ſees Neceſſity *for it, and that he was the ſole Judge of that* Neceſſity; *And*, 4. *That no Act of Parliament* (although the King gave the Royal Aſſent thereto) *could take away that Diſpenſing Power; and that the Teſt-Act was a Law that Endeavoured to take away that Power.*

This Judgment is Entred upon Record *Termino Paſche* 2 *Jac.* II. *Rotulo* 180, *and is reported in* Shower's *Reports* 475. *and was Accounted a Point of Law Adjudged and Determined.*

The Wildneſs of theſe Poſitions or Reaſons need not be Expoſed in worſe Colours, than the Mercenary Reſolutions themſelves do Expoſe them; for if the Giving this Judgment, and the Reaſons on which it was founded, were not High-Treaſon in Endeavouring to Alter and Subvert the Fundamental Form of this Government, which the Conſtitution had made Unalterable, then there never was any ſuch Endeavour, nor can be, neither hath *Britain* any Conſtitution, or any Laws to be Subverted, but ſuch Laws only as Depend on the King's Will, and on the Breath of his Judges.

SECT. VI.

THIS King Exceeded the Proceedings of his Royal Father, by Erecting a High Commiſſion-Court for Eccleſiaſtical Cauſes, in direct Defiance of the Acts of Parliament whereby that Power was Aboliſhed; and by that Commiſſion he brought the People under more grievous Preſſures from this new Erected Court, than they had ſuffered under the old one, before its *Suppreſſion.*

Some Writers have Aſperſed this new Court, with the odious Character of a *Court of Inquiſition*, and it was unqueſtionably an Attempt to ſubvert the *Conſtitution of the Church of* England, and to lay Waſte all its Fences againſt Popery; for the King obſerving, That the Proteſtant Clergy were at laſt Rouzed, and Couragiouſly met, and from the Pulpit Engaged the Torrent of Popery; his Majeſty ſent out his Order, by Way of a Letter, Directed to the Biſhops, *prohibiting* the Clergy to preach on Controverted Points of Divinity.

The

The Biſhop of *London* was, by the High Commiſſion-Court, Suſpended for not Suſpending Doctor *Sharp* Rector of St. *Giles's* (without Hearing the Doctor, either upon a Citation or Admonition) for Maintaining in his Sermons the Proteſtant Doctrines againſt Popery; and when the Biſhop offered to *Defend* himſelf, the Court told him, *They would not hear him*, Alledging, *The King was to be Obeyed.*

The next Effort of the King's Power over the Conſtitution in the Church, was his Mandatory Letter to the Univerſity of *Cambridge*, Commanding them to admit *Alban Francis*, a Benedictine Monk, to the Degree of Maſter of Arts, without Adminiſtring to him any Oaths, required by any publick or private Law, or Statute; and the High Commiſſion Court ſuſpended the Vice-Chancellor, for *Non-Compliance.*

But the moſt furious Act of Power, fell on *Magdalen College* in *Oxford*; for upon the Vacancy which happened by the Death of the Preſident, the King ſent down a Mandatory Letter to the Fellows, Requiring them, *To Elect one Mr.* Farmer, an Immoral Man, and a ſuſpected Papiſt, *to be their Preſident*; but the Fellows Lodged in the Hands of a Secretary of State, a **Petition** to the King, Repreſenting, *That, according to their Founder's Statutes*, Farmer *was Uncapable of that Office*, and praying his Majeſty, *Either to Leave them to Obſerve thoſe Statutes, or to Recommend ſome other Perſon that was, according to them, duly Qualified*; But the Anſwer was, *The King muſt be Obeyed.*

The Fellows, on the laſt Day of the Time limited for their Election, Elected Doctor *Hough* to be their Preſident, according to the Founder's Statutes, who was Admitted and Sworn in, by their *Viſitor.*

The King being Enraged, Renewed the High Commiſſion, Adding to the former Commiſſioners, ſome of his Judges, and granting therein, a *Viſitatorial Power* over the Colleges in both Univerſities: Theſe new Commiſſioners, Deprived Dr. *Hough*, and the King Retracting his former Mandate, ſent a new one, Requiring the Fellows *To Elect Doctor* Parker, *Biſhop of* Oxford, *to be their Preſident*; and for Non-Compliance, ſome of the Commiſſioners were ſent down to *Oxford*, where they Inſtalled

ſtalled a Proxy for Biſhop *Parker*, and, by Force, Broke Open the Preſident's Lodgings, and put him in Poſſeſſion; and, moreover, they Deprived and Expelled Twenty-five of the Fellows, for Refuſing to Sign a Paper, Teſtifying their *Submiſſion* to this new Impoſed Preſident.

Theſe Proceedings were an Evident Subverſion of the *Conſtitution in the Church*; and dear Experience convinced (though late) the Biſhops and Clergy, That it was equally Abſurd and Vain, to Imagine, That a Popiſh Head would Govern a Proteſtant Church, by any Counſels, but thoſe of Popiſh Prieſts, as it was to Imagine, That a Popiſh King would Govern a Proteſtant State, by any Counſels, but thoſe of *Popiſh Counſellors*.

SECT. VII.

THE King alſo Iſſued out a Proclamation in *Scotland*, for Liberty of Conſcience in Religion; in which were Inſerted, theſe *Imperious* Expreſſions, *That his Majeſty thought fit, by his Sovereign Authority, Prerogative Royal, and Abſolute Power, which all his Subjects of* Scotland *were to Obey* without Reſerve, *to Grant his Royal Toleration*, &c. *and to Suſpend and Diſpenſe with all Laws that were Contradictory*.

As King *Charles* I. had, by the Book of Sports, *Diſpenſed* with an Act of Parliament, ſo King *James* II. in *April* 1687, Publiſhed his Royal Proclamation for a *Toleration* in *England*; in which his Majeſty was pleaſed to be more ſparing in Words; but did thereby declare, *That he, by Virtue of his* Royal Prerogative, *did ſend out that his Declaration of Indulgence, to Proteſtant Diſſenters*, &c. *And that it was his* Will *and Pleaſure, that all Penal Laws, Contradictory thereto, ſhould Stand and be* Suſpended, *&c.*

This King, following the Example of his Father, Exerciſed *Martial Law* in Time of Peace, which Raiſed great Clamours, in Regard the late Acts of Parliament had Declared thoſe Proceedings *Illegal*.

The King cauſed an Imperious Order to be Iſſued out, Directed to the Biſhops, Requiring them *to Diſtribute his Declaration, for Diſpenſing with the Penal Laws, to their Clergy, and*

and to order them to Read *the ſame, in all Churches, in the Time of Divine Service*: But the Biſhops, and their Clergy, Juſtly *Queſtioned* the Legality of the Thing Commanded, and Deemed the *Power*, on which the Toleration was Founded, to be, not only a Diſpenſing, but a Diſannulling *Power*, tending to a Total Subverſion of the Original Form of Government.

Seven of the Biſhops therefore *Petitioned* the King, Praying his Majeſty, *Not to Inſiſt on their Diſtributing and Reading the Declaration*, Repreſenting, in the moſt Humble and Modeſt Manner, their Reaſons for that Requeſt, *viz. That the* Toleration *Specified in the Declaration, was Founded on ſuch a* Diſpenſing Power, *as Affected the whole Nation, both in Church and State, and which had been often Declared in Parliament Illegal; and that therefore, they could not, in* Conſcience, *make themſelves ſo far Parties to it, as the Diſtribution, and ſolemn* Publication *of it, once, and again, in the Time of Divine Service, would Amount to.*

This King's Perſonal Conferences, firſt with the Fellows of *Magdalen College*, and next with the Seven Biſhops, deſerve a ſpecial Remembrance: which happened thus; His Majeſty paſſed through *Oxford* in his Progreſs, on Purpoſe to ſhew his Reſentment for the Fellows Refuſing to Obey his Mandate to admit Biſhop *Parker* to be their Preſident; and for this End his Majeſty fiercely told them, *That they had not Dealt with him like Gentlemen, and had done very Uncivilly and Undutifully*; and when they offered their Petition upon their Knees, he refuſed it, and ſaid, *They were a Stubborn, Turbulent College, that had Affronted him*; and asked, *Whether this was their Church of* England *Loyalty*? He proceeded, and ſaid, *Go Home, and ſhew yourſelves good Members of the Church of* England; *Know I am your King*; I will be Obey'd: *I Command you, to go and admit the Biſhop of* Oxford; *Let them that Refuſe, know, They ſhall feel the Weight of their Sovereign's Diſpleaſure.* Echard 144.

As to the Seven Biſhops, when they preſented their *Petition*, of which no Perſon knew the Contents, before it was delivered into the King's Hands, his Majeſty, upon hearing it Read, ſaid, in great Wrath, *He could not Believe it; he could not Expect ſuch a* Petition *from the Church of* England: He told them,

If he Changed his Mind, they ſhould hear from him; If not, he Expected his Command ſhould be Obeyed: Adding, *That he was their King, and they ſhould* feel what *it was to Diſobey him.*

When the King Expected the Duke of *Somerſet*, as Lord Chamberlain, to Aſſiſt in the Introduction of the Pope's *Nuncio*, at *Windſor*, the Duke told his Majeſty, *That he could not ſerve him upon this Occaſion, being aſſured it was againſt the Law*; but the King Replied, *Don't you know, that I am Above the Law*; the Duke Anſwered, *If the King was, He* (the Duke) *was not.*

Theſe Expreſſions from the King's own Mouth, wrought in the People's Minds, greater Fear, Averſion, and Diſcontent, than any thing that Iſſued from the Mouths of his Miniſters.

SECT. VIII.

AT this Juncture, it may be ſuppoſed, That the Church of *England*, by their *Repreſentatives*, the Biſhops, put the King (or his Miniſters, who Informed the King) in Mind of their Doubts, That his Majeſty had Miſtaken the true **Object** of the Doctrine of *Paſſive Obedience*; foraſmuch as when the Church of *England* Divines Preached, with ſo much Zeal, that Doctrine, they meant, That the **Object** Intitled to that Obedience was, A King of *England*, Governing according to the Laws of *England*; but if it ſhould be Interpreted, That the Clergy of the Church of *England* meant, That a King of *England*, who Departed from the Laws of *England*, and Governed by the Laws of *France*, or by the Imperial Laws, or by any other Foreign Law, which makes the King's **Will** the Law, was the **Object** Intitled to the *Paſſive Obedience* they Preached; ſuch an Imputation would make the Clergy the moſt Depraved of Mankind; for ſuch a Conſtruction would make them, not only Enemies to their own Rights, and to the Rights of their Fellow Subjects, but Abuſers of the Word and Commands of God himſelf, in Preaching away this happy Conſtitution, by which all Mens Rights are ſecured; and therefore ſuch an *Interpretation* of that Doctrine, was a Miſtaken and Groundleſs *Aſperſion.*

King

King *James*'s Debaſing the Dignity of the Crown, by Waving the Supremacy and Sovereignty of this Kingdom, when he ſent to *Rome* an Ambaſſador (the Earl of *Caſtlemain*) to Tender his Obedience to that Biſhop's See; and his Majeſty's Receiving from thence a *Nuncio*, Created many Untoward and Angry Speculations.

The Completion of the King's inflexible Reſolution to maintain that Authority, his Judges had Declared for him; which his Majeſty ſaid would become contemptible, if he ſuffered ſuch an Affront from the Biſhops, as their Petition, to paſs Unpuniſhed; I ſay, the Rage of the Times, iſſued into a violent Proſecution of the Biſhops, in which the *Petition* was Charged to be a malicious and ſeditious Libel, to oppoſe the King and his Government; That it Injured and Affronted the King to his Face; That it cenſured the King and his Government, and preſumed to preſcribe to him their Opinions, in Matters of Government; That there is not any one Thing, the Law is more Jealous of, than Accuſations and Arraignments of the Government; That the *Petition* cenſured the King, as if his Government were *ill Adminiſtred*, and tended to ſet the People on Deſiring a Reformation, and that therefore his Majeſty Reſented their Uſage, ſo far, that he had Ordered and thought fit to have a *Publick Vindication* of his Honour, by a Legal Proſecution for ſo high an Offence.

The **Defence** which the Biſhops made, was to this Effect, *That the Conſtitution of the Government had given to every Subject this ſpecial Right*, That if the King Commanded a Thing to be done, which the Subject conceives to be Illegal, he may *Petition* the King, and therein inform him of the Reaſon, why he cannot obey that Command, (provided thoſe Reaſons are true); *That a* Power to Diſpenſe *with, or ſuſpend Laws, was as much a Part of the Legiſlature, as the Power to make Laws; for when a Law is Suſpended, the Obligation of it is taken away; That by the Conſtitution of the Government, the Legiſlative Power was Veſted in the King, Lords and Commons* Jointly; *That the Declaration in Queſtion, being founded on the King's Part only, without the Conſent of the two Eſtates of Lords and Commons, could not be Legal, neither could the Biſhops have any Deſign to Diminiſh the King's Power, Authority, or Prerogative, becauſe he had* no ſuch Power, Authority

rity, or Prerogative *to controul the Laws*: And thereupon, this Cauſe being tried by an honeſt Jury, the Biſhops were Acquitted, and the Right of Petitioning Aſſerted.

SECT. IX.

Salmon. IT may be Remembred, That about *May* 1688, the King's Mind Labour'd with vaſt Deſigns, one of which was, to carry on that Authority the Judges had given him; and for that End, he Reſolved to Grant, and probably did Grant a Capacity, not only to all the Popiſh Lords to ſit in Parliament, but to all ſuch Popiſh Gentlemen to ſit in the Houſe of Commons, as could procure themſelves, with his Majeſty's Help, to be Returned Members, notwithſtanding the Incapacity which the Teſt-Act had Impoſed: His Majeſty looked on Succeſs in this Point to be the Fruit of his Pains in Gaining the Charters, and therefore no Induſtry was ſpared in Regulating (as it was then called) the Corporations for that Purpoſe.

The King, about this Time (although of the Lateſt) became ſenſible, That it was as Abſurd and Vain, to imagine, he could introduce Popery and Slavery into a Free Nation with a Proteſtant Army, as it was Abſurd and Vain, in thoſe credulous Clergy and Laity, to imagine, That a Proteſtant Church, and a free Nation could be preſerved under a known Arbitrary Popiſh Head and Governor; the King, therefore caſt his Eye on *Ireland*, as an Inexhauſtible Source for the Supply of Popiſh Soldiers, and began, by Degrees, to Weed out of his Army the Proteſtant Captains and Soldiers, and to place, in their Stead, *Roman* Catholicks, fetcht at firſt privately, and after by whole Regiments, from *Ireland*.

In this Place, the Antient Genius of the *Britiſh* Nation, may be introduced, the ſame being an Unextinguiſhable Inclination Implanted in *Britons*, to Love, and Delight in, their own *Repreſentatives*, the two Eſtates of Lords and Commons, which they call a *Free Parliament*; it is a Parliament they look at, as their Helmet to cover them, and as their Sword and Buckler to Vindicate and Revenge their Preſſures and Sufferings; a *Free Parliament* is the Theme of all Diſcourſe, and the End of all their Wiſhes; and whenever the Supreme Governor either deſiſts from Aſſembling them, or Endangers their Free Elections, the People of all Ranks and Degrees, both Eccleſiaſtical, Civil, and Mili-

Military, Engage in Aſſociations to Demand and Recover (*That* which Foreigners call the *Britiſh* Idol) a *Free Parliament*, or, in other Words, the People's **Image** or Repreſentation, according to the Poet;

Naturam expellas Furca licet, uſq; recurret.

It is therefore ſtrange, That King *James* ſhould know ſo little of this National Temper, as to imagine his Power to be Abſolute or Independant.

SECT. X.

THIS King had parted with the laſt Parliament, after the Manner his Royal Father had often done, in *Indignation*, and had Exerciſed a Government ſo Arbitrary and Unwarrantable, that every one concluded he never Intended to Aſſemble another, until he could force the Elections; The Lords and Commons therefore, in order to *Diſturb* his Arbitrary Adminiſtration ſent a Grand **Invitation** to the Prince of *Orange*; a Prince of the Royal Family, incomparably Qualified, and Equally Great in the Field and in the Cabinet; Requeſting him, as their Captain, to come and Attempt their Deliverance, and to Compel the Aſſembling a *Free Parliament*; and, at the ſame Time, thoſe *Inviters* ſollicited the States of *Holland*, to furniſh the Prince with a Fleet and an Army ſuitable to the Undertaking, promiſing not only to *Reimburſe* the Charges, but to make Returns ſuitable to the Kindneſs, if their State ſhould ever want the like Aſſiſtance.

Happy it was for *Britain*, that *Holland*, at this Time, was under Terrible Apprehenſions of Invaſion from *France* by Land, and from *England* by Sea, in Execution of the *Secret League* between the two Kings, which made the *Dutch* readily Embrace the *Invitation* to Extricate and Wreſt *Britain* from the *French* Alliance. This Important **Invitation** was an Exact Counter-part of the *Invitation* of the *Scots* in the Year 1640, at the Time when they were under the like Fear of an Invaſion from *Ireland*; for both the *Scots* and the *Dutch* Accepted the *Invitations*; both the *Invitations* were to compel the Aſſembling Free Parliaments, and both the *Scotch* and *Dutch Invaded England*, and Compelled the calling Parliaments, and both

ſaved their own Countries by thoſe Invaſions, and by thoſe Parliaments.

The Prince of *Orange* thus *Invited*, Reſolved to Engage in the Undertaking, and began to make Preparations.

In *September* 1688, when King *James* and the *French* King were Convinced of the Prince of *Orange*'s Deſign, *France* offered King *James* an Army of 20 or 30,000 Men; but an *Engliſh* Lord (the Earl of *Sunderland*) oppoſed the Propoſal, with theſe Echard, 133, 137. Juſt and Patriotick Reaſons; *That ſuch an Army might be indeed a real Strength; but then it would Depend upon Orders from* France: *It might Maſter the Prince of* Orange *and his Adherents, but then it would become the King's* **Maſter** *too, and Reduce him to Govern by their Orders, and ſo Reduce the King to become a Vice-Roy to the King of* France; *That a Leſſer Auxiliary Army of Foreigners, eſpecially* French, *would drive the People and his own Army into a General* **Revolt**, *and provoke them to treat the King and his Miniſters as publick Enemies are uſually treated.*

SECT. XI.

Ibid. 143. ABOUT this Time, *September* 1688, the King ſent for all the Biſhops then in Town, being nine or ten in Number, who, upon the King's Demand of their Advice, gave his Majeſty Ten Heads of Advice, the ninth whereof was to call a **Free Parliament.**

The King finding that the Prince of *Orange*, by his Declaration, had grounded his Invaſion on theſe Facts, *That his main Deſign was, to induce the Aſſembling a* Free Parliament, *and by that Means, to reduce the* Diſpenſing Power, *and to reform other Illegal Proceedings in the Adminiſtration, and particularly that they might Inquire into the Right of* Succeſſion, *and to ſettle the Government according to the Conſtitution*; Intimating, *That he the Prince was* **Invited** *to this Enterprize, by many of the* Lords Spiritual and Temporal; his Majeſty, on *Friday* the Second of *November* 1688, ſent for all the Biſhops then in Town, who were about five or ſix, and peremptorily Demanded, *Whether the Contents of the Prince's Declaration, Relating to their* Invitation, *were true?* The Biſhops Anſwered only with General Profeſſions of Fidelity and Allegiance; whereupon

upon the King Required them to Juſtify themſelves, by Declaring in Writing their **Abhorrence** of the Prince's Intended Invaſion, Adding, *That his Royal Declaration againſt the Prince, was in the Preſs, and waited to have their* Abhorrence *inſerted*: but ſtill the Biſhops Declined; which put the King into a great Vehemence and Tranſport, inſomuch that he Declared, *They muſt do it*; **for his Succeſs** *Depended on their Compliance*: But all the King could get from them, was, *Their* Joining *with the Prince in an Earneſt Requeſt, to call a* **Free Parliament**, and that made his Majeſty part from them in great Indignation, and the Enraged Jeſuits Adviſed the King to impriſon them, and Extort the Truth by Violence; whereas the Truth was, That the King would have had them *Abhor* the very Means of their Deliverance.

This Juncture brought into View, the Exactneſs of the **Parallel** between this King, now in Want of Aſſiſtance, and his Royal Father; for when the *Scots* Invaded *England*, in *Auguſt* 1640, (*Clarendon*, Vol. I. p. 117.) King *Charles* Required the Lords, and Great Commoners (then Numerous) at *York*, to Sign a Paper called a *Proteſtation*, containing, *That the Subſcribers did* Diſclaim *and Renounce their having any Correſpondence with thoſe Rebellious Invaders*; but the Lord Viſcount *Say*, and the Lord *Brook* (Two Popular Men, and then moſt Devoted to the Church, and to the Government) poſitively *Refuſed*, even in the King's *own Preſence*, to make any ſuch Proteſtation, inſiſting, *That if the King ſuſpected their Loyalty, he might Proſecute them as he thought fit, but that it was againſt Law* (i. e. The Conſtitution) *to Impoſe Oaths or Proteſtations, which the Law did not Enjoin; and, in that Reſpect, they ought not to* **Betray** *the Common Liberty, but would ſubmit to his Majeſty's Proſecution, if any ſhould be made.* The King therefore Impriſoned them; but the Complaints againſt that Illegal Proceeding, being General, they were *Diſmiſſed.*

The Biſhops now, in 1688, followed thoſe Two Lords Example, even in King *James*'s own Preſence, and in Declining to Obey his Expreſs and Perſonal Commands, and Refuſed to **Betray** the *Publick Liberty.*

From which Two Inſtances, may be Collected theſe ſhort Remarks, *That King* James *was now Come Over to* Sidney's *Opi-*

Opinion; *That ſome* Power *is Derived from the People*; *That* Britons, *whatſoever be their Pretences, will, when* Preſſures *and Sufferings come to be their own Caſe, Fly to the Conſtitution for Shelter*; *And that the Biſhops now thought it no Diſparagement to* Imitate *the Proceedings in* 1640.

SECT. XII.

THE Prince of *Orange* being ſo *Invited*, and Suſtained with a Fleet of Men of War, as a Convoy to many Tranſports, having on Board, about 14000 Armed Forces, Sailed from *Holland*, on the 1ſt, and happily Landed at *Torbay*, on the 5th of *November*, 1688: And now the **Charms** of the Conſtitution, and a *Free Parliament*, Stepped forth to Encounter the *Magick* of King *James*'s Imaginary Diſpenſing *Power*, to Alter and Vary the Laws of the Kingdom.

The King, at this Time, was Informed, *That ſome* Addreſſes *were Coming from many Parts, to Requeſt his Majeſty to Come to ſome Accommodation with the Prince, and to Call a Free Parliament*; but his Majeſty Declared in Council, *That he would look upon thoſe as his Enemies, who ſhould pretend to Adviſe him to Treat with the Invader of his Kingdom.*

The King, by his Declaration againſt the Prince of *Orange*, Affirmed, *That the Prince was the ſole Obſtructor of a* Free Parliament, *becauſe a Parliament could never be Free, whilſt an Army of Foreigners was in the Heart of the Kingdom*; but promiſed, *To Call ſuch a one, when his Kingdom ſhould be Delivered from the Invaſion*: And he might have added, *When it ſhould be Delivered from* Iriſh *Soldiers, and* Popiſh *Counſellors*; for, 'till then, what he promiſed was *Impoſſible*.

After the Prince's Landing, the Lords, Spiritual and Temporal, Adventured (notwithſtanding his Majeſty's Declaration in Council Prohibiting it) to Petition the King, and therein to ſpeak the *ſame Language* with the Prince's Declaration, in Requeſting his Majeſty to Call a **Free Parliament**.

The King, after ſome Days Silence, and after the *Jeſuits* had firſt Burleſqu'd the Petition, Publiſhed an Anſwer in Writing,

ing, *That he would have a Parliament, and a Free one, as ſoon as ever the Prince of* Orange *had Quitted the Realm.*

SECT. XIII.

THE King having Reſolved to begin his Journey on the 17th of *November*, 1688, to ſet himſelf at the Head of his Army at *Salisbury*, he firſt Aſſembled his Military Officers, in and about *London*, and Declared to them, upon his Royal Word, *That he would Perform the Promiſe he had made to the Lords Petition, by Calling a Free Parliament, as ſoon as the Prince of* Orange *had Quitted the Kingdom*; which was Underſtood, *To have no Parliament at all.*

The King Reached *Salisbury* on the 19th of *November*, 1688, and the very next Day, great Numbers of the Chief Officers of his Army, Applied themſelves to the General (*Feverſham*) deſiring him to aſſure his Majeſty, *That they would Serve him faithfully; but as for the* **Cauſe** *of the Prince of* Orange, *they could not, in Conſcience, Fight againſt him, becauſe the Prince was for Calling a Free Parliament, and ſo were They.*

This is a *material* Piece of Hiſtory, and proves, That the Prince of *Orange*'s Invaſion, was not the *Cauſa Efficiens* of the Revolution; for the King's Speech to the laſt Seſſion of Parliament, had firſt Kindled the Fire, which Increaſed by all his future Steps in his Adminiſtration, although it burnt only in the Peoples Minds: The Invaſion was therefore the *Cauſa Cauſata*, and only Opened the Door, to give Vent to that Fire, which, when it Flamed out, Conſumed all the Illegal Structures.

This private Fact, accounts for the King's Sudden and Surprizing **Retreat** from *Salisbury*, and for the Orders he gave his General (*Feverſham*) to **Diſband** his Army, wherein he was pleaſed to ſay, *If I could have Relied on my Troops, I might, at leaſt, have had one Blow for it*: For no Man can look at his Majeſty's Condition, otherwiſe than as a Priſoner in the Midſt of his *own Army*, which was at the Prince's Devotion; Every one muſt think, with King *James*, that as his Provocations were General, ſo the **Revolt** was General, eſpecially when it began in his own Army, and muſt conclude, That he could

not Abide the Mortification, to ſee the Publick and Private Acts of his Adminiſtration, Ravelled into, Expoſed, and Cenſured, by a *Free Parliament*.

This Account Atones for Mr. *Echard*'s Epithets and Gloſſes of other Parts of his Hiſtories, and Juſtifies him to the World, to be, in ſome Things, a Valuable Hiſtorian.

His Majeſty, at his laſt Farewel to *Britain*, was pleaſed to Leave it one Political Legacy, *viz. That there is not any thing can make this Nation ſo Great and Flouriſhing, as Liberty of Conſcience, for that ſome of our Neighbours Dread it.*

The Concluſion is therefore clear, That King *James*'s Withdrawing, was not occaſioned by Force of Arms, or by any Reſiſtance, for no Battle was Fought, and but very little Blood was Spilt; but it was his own Voluntary **Dereliction** of the Government, rather than Stand a Parliamentary Inquiſition, Touching his own Renunciation and Breaches of Contract, Oaths, and Promiſes: And this is the more probable, as it is obſervable, That his *Admiral*, Lord *Dartmouth*, and the Chief Officers of the Fleet, Concurred with the Military Land Officers, and ſent an Addreſs to the King, of the ſame Nature with the Prince's Declaration, to Beg of his Majeſty to Call a **Free Parliament.**

The Lords, and Others, Aſſembled at *Nottingham*, Declar'd, *That King* James's *Adminiſtration, in the Manner he had Exerciſed the Government, were Uſurpations on the Conſtitution; and that they owned it Rebellion to Reſiſt a King that Govern'd by Law, but to Reſiſt a Tyrant, who made his Will* **his** *Law, was nothing but a* Neceſſary Defence.

SECT. XIV.

WHEN the King Returned from *Salisbury*, in a manner intirely Vanquiſhed, having not been able to Strike one Stroke in Defence of himſelf, or his Government, he Called the Privy Counſellors and Peers together, to Adviſe him what was fit to be done in that Extremity; and All Joined in the *Language* of the Prince's Declaration, *That his Majeſty ſhould Call a* **Free Parliament.**

Thus,

Thus, which Way ſoever the King turned him, the United **Voice** of the People, and their Cries for a *Free Parliament*, not only Met him, but Encountered and Vanquiſhed him; after which, the Prince had no more to do, but to Walk Peaceably and Quietly up to *London*.

The King, although he was thus Encountered and Purſued with Petitions to call a *Free Parliament*, continued *obſtinate*; for he well enough knew, that a Parliament would pull down the Power, which he had preſumed to *Uſurp*, and Set **Above** the Conſtitution and the Law; and that That Proceeding would cauſe Death, or rather Subverſion of all his Towering Schemes, and perhaps too, of his Miniſters, Judges, and Counſellors; The King knew, that a *Free Parliament* would commence Proceſſes againſt his Chancellor *Jeffreys*, and his Judges, in the Nature of *Quo Warranto*'s to know firſt of *Jeffreys*, by what Law or Warrant he took upon him, in the Caſe of Mr. *Williams* the Speaker, to inſult the Houſe of Commons, by calling his Plea of the Privilege of that Houſe an idle, inſignificant Plea; and by what Law or Warrant he took upon him to Determine the Juriſdiction of that Houſe, by Saying and Adjudging, *That the Houſe of Commons had no Authority to Order or Licenſe the Printing and Publiſhing their Proceedings, touching any Subject, how great ſoever*; and in the next Place to Demand of the Judges, to know, by what Law or Warrant they took upon them, in the Caſe of *Godden* and *Hales*, to declare, *That King* James *had a Sovereign Power, abſolute from, and* above the Laws; *and that a Law of, or concerning Government, may be Diſpenſed with, or Varied by the King, who was but One of the Three Eſtates, ſeparately, without the Conſent of the other Two, and that the King had ſuch a* Power to Diſpenſe *with and Vary the Laws Of or Concerning Government, as cannot be bound by an Act of Parliament made by all the Three Eſtates of King, Lords, and Commons* Jointly, *and that the King could grant a Capacity to Sir* Edward Hales, *to hold and execute his Office of Collonel*, when the King and Collonel both, had Conſented and Enacted, *That Sir* Edward *ſhould not be Capable ſo to do*; for every Man's Conſent is involved in an Act of Parliament.

To which Queſtions, every one knows, the Judges could give no Anſwer, nor ſhew any Law or Warrant for what they had done; for there was no ſuch Power comprehended in their Commiſſion,

Commiſſion, and conſequently they were not only in Inclination the moſt *Enormous Enemies* to this Conſtitution, but actual Subverters of the Fundamental Form of this Government, which was *High-Treaſon*; and therefore all Men were convinced, That the Prince's Army in *England* was the only *Human Power* that couldmove and cauſe the Calling a *Free Parliament*: Which Opinion was made Unqueſtionable, when the King, after his own Army and Fleet, and others, both *Clergy* and *Laity*, had *Declined* him, and, inſtead of Aſſiſting him, to continue his former Manner of Government, ſtood by, to ſee the Law ready to *Condemn* his Proceedings as ſo many Uſurpations; I ſay, when his Majeſty ſaw all this, he choſe rather to *Depart* from, and Relinquiſh the Government, than part with his Arbitrary Notions, or with that imaginary **Power** which he fancied had plac'd him *above the Law*.

But the laſt Act of King *James*'s Regal Power, in Commanding *Feverſham* to Disband the Remainder of his Army, then conſiſting of about 4000 Popiſh *Iriſhmen*, deſerves a particular Remembrance; for his Majeſty took Notice, *That they only had ſtuck to him, and thank'd them, but did not expect they ſhould expoſe themſelves, by Reſiſting a* **Poyſoned** *Nation*: His Majeſty, inſtead of the Epithet *Poyſoned*, ſhould have ſaid *a* **Leavened** *Nation*; for it was the **Old Leaven** that was Originally made Part of the *Eſſence* of the Conſtitution, that had Fermented by Little and Little, and until the whole People were Leavened. It was that good old Claim of Juſtice, That the People might, by their Repreſentatives in a Free Parliament, Execute the oppreſſed Laws, which Leavened the Nation. King *James* might have Recollected, That this was that old Leaven of the Kingdom (injuriouſly called *Poyſon*) which his Royal Father had, for twelve Years together, Endeavoured, but failed, to Expel.

SECT. XV.

THIS Juncture opened a large Field for new Conſultations and Reſolutions. The Caſe was ſuch as had never happened; for now it was ſeen how a Great and Arbitrary King, ſurrounded with a Standing Army, and ſtrictly Allied with a King more powerful than himſelf, was Deſerted and left Defenceleſs; for the **Revolt** was General: And how he withdrew his Natural Perſon out of the Kingdom, leaving the Kingly Office Vacant, and

and the Nation without Government, was the ſubject Matter which came under Conſideration.

The Prince of *Orange*, who, by the Invitation of the Lords and Commons, had Adventured in this Undertaking to Reſcue them, and the Conſtitution, and the Liberties of *Britain*, did, at their Inſtance, take upon him the Adminiſtration of the Government, and, at their Requeſt, ſent out his Circular Letters, Directed to the Lords Spiritual and Temporal, Deſiring them to meet at *Weſtminſter* on the 23d Day of *January* 1688, and alſo other Circular Letters Directed to the Sheriffs, Requiring them to cauſe Elections to be made in every County, City, Univerſity, and Borough of *England* and *Wales*, of Repreſentatives for thoſe Places, to meet the Lords at the Time and Place Appointed, and there conſult and make Proviſions to *Reinſtitute* the Regal Eſtate, and Reſtore the Antient Form of Government.

The Elections being made, the Lords and Commons Aſſembled at *Weſtminſter*; and being ſo Aſſembled, the Commons forthwith took into Conſideration the State of the Nation, and King *James*'s Male Adminiſtrations: Upon Debate thereof, They Voted and Reſolved, *That King* James II. *having* **Endeavoured** *to* Subvert *the Conſtitution of the Kingdom, by Breaking the* Original Contract *between King and People, and by the Advice of Jeſuits, and other wicked Perſons* (meaning, as afterwards Appeared, Evil Counſellors, Evil Judges, and Evil Miniſters) *having Violated the Fundamental Laws, and withdrawn himſelf out of the Kingdom, had* **Abdicated** *the Government, and the Throne was thereby* **Vacant.**

The Commons ſent this Vote or Reſolution to the Lords for their Concurrence, and the Lords return'd it with two Amendments, *viz.* inſtead of the Word *Abdicated*, inſert the Word *Deſerted*, and omit theſe Words, *And that the Throne is thereby Vacant.*

The Commons Diſagreed to the Amendments;

I. *Becauſe the Lords had Conceded and Agreed to the Premiſes*, viz. *That King* James *had* **Endeavoured** *to Subvert the Conſtitution of the Kingdom, by Breaking the* Original Contract, *and had Violated the Fundamental Laws, and had withdrawn*

himſelf; *but would have the Deſertion applicable only to the Withdrawing, whereas the Word* Abdicated *reſpected the Whole.*

II. *Becauſe it is from Thoſe, who are upon the Throne, that the People ought to receive* Protection, *and to whom, for that Cauſe, They owe Allegiance*; *But there being none ſuch now, the Throne is therefore* Vacant.

The Lords Adhered to their Amendments, and gave theſe Reaſons for that *Adherence*;

I. *Becauſe the Word* Abdicated *is not a Word known to the Common Law of* England, *but in the Civil Law it ſignifies an Expreſs Act of Renunciation, which is not in this Caſe.*

II. *The Lords Conceſſions did not import more, than that the* Exerciſe *of the Government, by King* James, *was* Ceaſed, *and that the Lords were willing to ſecure the Nation againſt his* Return.

III. *Becauſe the Conſtitution of the Monarchy is* Hereditary, *and the Right Heir cannot be Barr'd by any Act of his Predeceſſor*; *and therefore, if the Throne be* Vacant *of King* James, *yet Allegiance was due to the Perſon, to whom the Right of* Succeſſion *doth belong.*

Upon which there Enſued a *free Conference* between the Lords and Commons.

The Managers for the Commons were, Mr. *Hampden*, afterwards Chancellor of the *Exchequer*; Sir *John Maynard*, afterwards Firſt Lord Commiſſioner for the Cuſtody of the Great Seal of *England*; *John Somers*, Eſq; afterwards Lord Chancellor of *England*; Sir *John Holt*, afterwards Lord Chief Juſtice of *England*; *Henry Pollexfen*, Eſquire, afterwards Lord Chief Juſtice of the *Common-Pleas*; Sir *George Treby*, afterwards Lord Chief Juſtice of the *Common-Pleas*; *Giles Eyre*, Eſq; afterwards a Judge of the *King's-Bench*; *Paul Foley*, Eſq; afterwards Speaker of the Houſe of Commons; Mr. *Sacheverel*, Sir *Robert Howard*, Sir *Richard Temple*, Sir *Thomas Lee*, and ſome others.

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The Managers for the Lords were, the Earls of *Pembroke*, *Clarendon*, *Nottingham*, and *Rochester*, and Dr. *Turner*, Lord Biſhop of *Ely*.

The Liberty and *Freedom* of Speech at the Conference was Equal to the Importance of the Subject; for every one Argued without *Fear* or *Reſtraint*.

The Lords and Commons, and even King *James*'s beſt Friends, Agreed in the Premiſes, *That King* James *had Endeavoured to Subvert the Conſtitution of the Kingdom, by his Breaking the* Original Contract, *by his Violating the Fundamental Laws, and by his Withdrawing himſelf out of the Kingdom*: Theſe Facts being admitted by Both Sides, they differed only about the Concluſion, to be Inferred from thoſe Premiſes.

The Commons had made a Double Concluſion, *viz. That King* James *had therefore* Abdicated *the Government, and that the Throne was thereby* Vacant.

The Lords Managers Contended, That from thoſe Premiſes, *viz. From the King's* **Endeavour** *to Subvert the Conſtitution*; *His Breach of the* Original Contract; *His Violation of the Laws*; And, *His Withdrawing out of the Kingdom*, no Larger Concluſion could be Inferred, than, *That he had* **Deſerted** *the Exerciſe of the Government, and not the* Right *to Govern*: Whereas the Word *Abdicated*, Imported a Voluntary, Expreſs Renunciation of the *very Right to Govern*, which did not appear in this Caſe; and that, therefore, all that was Wanting, was to Supply the *Exerciſe* of the Kingly Office, by Providing a Regency to Govern, during King *James*'s Life: Whereas the Commons Concluſion Inferred, *A New Election of a King*, which would (as they ſaid) be a Breach of the Conſtitution, by Cutting off, or Deſtroying the *Hereditary Succeſſion*.

It was Argued by the Commons, to Maintain their Double Concluſion touching the Abdication and Vacancy, *That the Original Government of this Nation, when it was firſt Inſtituted, did Commence by* Contract, *or* Agreement, *which Stipulated the Conditions that each Party* (to wit) The Governor and Governed, *ſhould Obſerve*; The moſt material Part of which was, *That there ſhould be Inſtituted Three Eſtates of King, Lords,*

and

and Commons, who ſhould have the ſole Power of Making New Laws, and Altering Old ones; And had Provided and Inſtituted, *That the King, or ſupreme Magiſtrate, ſhould have the* Executive Power *of the Laws made, and to be made, for the Benefit of the People*; *That thoſe Laws ſhould be the* Rule *by which he was to* Adminiſter *his Government, and by which the Subject was to Obey*; *And that there ſhould be a Power* Reſerved *in the Two Eſtates of Lords and Commons, in all Caſes of Extraordinary Neceſſity, to make Proviſions for* Defects *in Government.*

The Lords Conceded to all theſe Poſitions, touching the Fundamental Form of the Government, adding thereto, this other Ingredient, *That it was one Part of the* Original Contract, *that the* Succeſſion *to the Kingly Office, or Supreme Magiſtracy, ſhould be* Hereditary *to the firſt King, and to the Heirs of his Body.*

The Commons Proceeded, and Argued, *That the Supreme* Magiſtracy, *or* Kingly Office, *was, by the Conſtitution, under a* Truſt *for the People, to Govern according to the Laws made, and to be made*; *and, that that* Truſt *might be* Abdicated, *or Renounced, or Departed from, either by an Expreſs Act and Deed, or by Acting contrary to that* Truſt, *and, eſpecially, if thoſe Actings are ſo Inconſiſtent with the* Truſt, *as to be Subverſive of the Truſt itſelf*; *for a Man cannot Expreſs a greater Renunciation, or* Diſclaimer of a Truſt, *than by Acting and Declaring Things, quite contrary to the* Truſt; Adding, *That in Common Reaſon and Senſe, the Doing an Act inconſiſtent with the Being and End of a Thing, or quite contrary to the End of that Thing, ought to be Conſtrued, An Abdication, and a Formal Renunciation of that Thing.*

It was Argued by the Commons, *That when the whole Conſtitution, and all the known Laws of the Kingdom, and the Liberties of the People, have been Departed from, and* Subverted, *the Lords and Commons are the Grand Inquiſitors*; *And if, upon Inquiry, it is found, That he who had the Adminiſtration* Truſted *to him, was the* Author *and Actor in the Attempt, and had Wilfully Departed from the Laws, and Acted Contrary to, and in Defiance of Them, what could that be, but a Renunciation of that* Office, *with which he was* Truſted

Truſted *to Preſerve them? and, conſequently, his Place was thereby* Vacant.

That by the Inquiſition now made, it was found by the Vote or Verdict of Both Houſes, of Lords and Commons, that King *James* had been the **Author** and Actor in that Attempt, and had wilfully Departed from the known Laws, and from the Conſtitution; from which it was Apparent, That he had *Abdicated*, and that there was a *Vacancy*, or Defect of Government; and King *James* had not a Friend that Denied it.

The Lords Managers made theſe Conceſſions, *viz. That when there is a* Defect *in Government, there is no Queſtion, but it muſt be Supplied: That the King may Renounce the Kingdom, and Depart from the Conſtitution, by which it is to be Governed, and that he may do it, as well by Tacit, or Implicit Acts, as by Expreſs Words or Deeds: And that when he makes the* Exerciſe *of his Government, and the Subjects Obedience to him, conſiſtently with the Conſtitution,* Impracticable, i. e. *When the Subject, if he performs the King's Orders, muſt neceſſarily* Break *the Conſtitution, and the Laws; then thoſe Overt-Facts amount to a* Renunciation *of the Government.*

But notwithſtanding theſe Conceſſions, the Lords Managers inſiſted upon theſe Extraordinary Notions, *viz.*

I. *That the Word* Abdicated *did Import ſome Advantage, which the People would take, of the Facts objected to King* James, *whereas the Maxim of Law was,* That the King can do no Wrong; *and if every Tranſgreſſion, or Violation of the Law, by the Prince's Connivance, or Command, were ſuch a* Breach *of the Fundamental Laws, as would Infer an* Abdication, *then that* Maxim *would be of no Signification; for it would, in that Caſe, be a Vain Thing to Call any of his Miniſters, or Officers, to account before the ordinary Judges, whoſe Authority being Derived from their Maſter* (the King) *muſt neceſſarily Determine with* **His.**

II. The Lords Managers Inſiſted, *That there was a Difference between a* Right, *and the* Exerciſe *of that Right; That there might be a* Ceaſure *of the Exerciſe, without Renouncing the* Right; *And that although King* James *had* Ceaſed *to Exerciſe the Kingly Office, he did, neverthelefs, Continue in the*

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Office, and Retain the Right *to Exerciſe it; and, conſequently, King* James's *Ceaſing to Exerciſe the Government, either by Acting contrary to his* Truſt, *or by Departing from the known Laws, or by Withdrawing his Perſon out of the Kingdom, did not Renounce his Right to Govern*: However, the Lords, even the Advocates on his Side, were willing to Join in any Act, to ſecure the Nation againſt his **Return** into the Kingdom.

III. The Lords Managers Inſiſted, *That there might be a Diſtinction made between the* Natural *Perſon, and the* Political *Capacity, of King* James, *although he was Living, for he might* (as they Admitted) *Renounce and Diveſt himſelf* Perſonally; *but could not* (as they Alledged) *Defeat his Heirs; and, therefore, if the Throne were* Vacant *of King* James, *yet Allegiance was due to the Perſon, to whom the Right of* Succeſſion *did belong, although King* James *were not dead Naturally, becauſe this Monarchy is Hereditary, and the Laws know no* Interregnum.

The Commons being by theſe Arguments Heated, Replied, with Warmth, in this Manner, *viz.*

I. As to the firſt Objection, the Commons Argued, *That* Wrongs *might be divided into the* Generalia *and* Specialia, *and that the Judicial Power of the ordinary Judges, was Derived from the Regal Power, which the Conſtitution had Reſtricted to Ordinary, or Special Controverſies, between the King, and this, or that, particular Subject*; and therefore it was Urged, *That when the King Breaks the Law, in ſome few particular Inſtances, it may be ſufficient to take an Account of it, from thoſe Evil Miniſters, that were Inſtrumental in it, why ſuch a Thing was done againſt the Laws, or why ſuch a Law was not Obſerved and Executed by them, whoſe Duty it was to put it in Execution*: The Subject may, in ſuch Caſes, have Remedy in the *Ordinary* Courts, before the Ordinary Judges, or by the *Extraordinary* Court of Parliament.

But when King James, *having only a Limited Authority, by which he was obliged to keep the Laws made,* (as to the Executive Part of the Government) *and to obſerve the Conſtitution for making ſuch New Laws as the People ſhould find neceſſary, and ſhould deviſe and preſent to him, in a Parliamentary Way; for the Royal Aſſent, did Violate not a particular Law, but All*

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the Fundamentals; not injure a particular Person in Religion, Liberty, or Property, but fell on the Whole Constitution itself; and degenerated from the Laws, and set himself above the Laws, *and assumed a Power to unmake or vary the Laws, and made his Will* his *Law; It was as much as if he had said,* I will no more keep within my Limited Authority, nor hold my Kingly Office upon such Terms; I will not execute the Laws, that have been made, nor suffer others to be made, as my People shall, for their Security, desire, which are the Two Main Parts of the Kingly Office in this Nation; This Limited *Title* I derive from the Law, and had it by, and from the Original Contract, between King and People; but I Renounce That, and will assume to myself another *Title*; that is, a Title by which I may Act, without being Circumscribed by any Laws; a Title above the Laws, by which I myself alone, may *Unmake* and Vary all the Laws, and make New Ones, at my Will and Pleasure, contrary to the Old ones. *Where shall a Man go for Redress from Injuries, when the Supreme Governor is himself the* Author, *and so becomes* Judge *and* Party? *He was most apparently so in the Case of the* Quo Warranto's, *for the plain Design was to* Subvert *the Constitution in the very Foundation of the* Legislature.

These grand Questions therefore (added the Commons) *can never be brought before the* ordinary *Judges, unless they should assume an Authority, to* decide, *whether their Master hath* Abdicated, *or whether he is* King or not; *and therefore such Controversies would come to be tryed,* Coram non Judice; *for they can never fall within the Compass of the Judges Commission, or Jurisdiction, or their Oath.*

It was Urged, *That when such Attempts are made on the* Essence *of the Constitution, it is not the People that bring the Nation into this State of Nature, but Those who have reduced this well-formed Government into Confusion.*

It was therefore Argued, *That because King* James *had thus Violated the Constitution and the Laws, which ought to have been the Rule both of his Government, and of the People's Obedience,* the Commons were, for that Reason, forced, in this *Extraordinary Case,* to recur to the *Extraordinary Remedy,* in Objecting, Concluding, and Declaring, *That King* James *had,*

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had, by his own Acts, and not by Coertion, Abdicated *the Government, and that the Throne was thereby* Vacant.

As to the ſecond Objection, made by the Lords Managers, *That the* Ceaſure *of the Exerciſe of Government did not Renounce the* Right; *and that King* James, *notwithſtanding he by his Actings, inconſiſtently with his Truſt, had* Ceaſed *the Exerciſe of the Kingly Office, and had withdrawn himſelf out of the Kingdom, did yet* continue *in the Office, and was King ſtill; but that, however, the Lords were willing to join in Securing the Nation againſt his* **Return**;

The Commons Argued, *That this Objection offered by the the Lords Managers, Contradicted the Lords own Vote; for the Lords had Voted, as their Concluſion from the Premiſes,* That King *James* had **Deſerted** the Government; *without any Mention of the* Exerciſe; *and, therefore, whoever* Deſerts *the Government,* Deſerts *the Exerciſe of Government; becauſe the Government, and the* Exerciſe *of it, do, in the Conſideration of the Common Law, mean the ſame* (and not different) *Things.*

The Commons alſo Argued, *That the Actings of King* James, *mentioned in the Vote, could not be underſtood to be a bare* Ceaſing *the* Exerciſe *only; but did neceſſarily infer his deſtroying the Government itſelf; That there can be no Diſtinction between Government, and the* Exerciſe *of Government, the Terms themſelves are in Law ſo Coincident, neither of them can* ſubſiſt, *without* conſiſting *together; for, whoever takes from the King the* Exerciſe *of his Government, takes from him his* Kingſhip; *for the Power, and the* Exerciſe *of that Power, are ſo joined, they cannot be ſevered; That the Lords themſelves had Voted,* That King *James* had *Deſerted* the Government, *which neceſſarily imported he was not in the Government, but had left the Kingdom deſtitute of Government.*

The Commons Argued, *That the Overture of the Lords to join in ſecuring the Nation againſt King* James's **Return**, *could not be done, without Impowering ſome Perſon to Adminiſter the Government, in King* James's *Name, during his Life, without his Conſent; which, the Commons inſiſted, was of an Extraordinary Nature, and would involve the Lords in the very* Miſchiefs *they ſeemed to* Decline; *for, in ſuch a Proceeding, they would*

would Exerciſe a Coercive Power over the King: by Admiting the Right *to Govern, to be in him, and yet at the ſame Time placing the* Exerciſe *of that Government in another.*

The Commons Argued, *They could never come into a Proceeding to take away the* Exerciſe *of the Government, or the Government itſelf, from King* James; *for if King* James *were King ſtill, the Commons could not by any Means agree to the keeping him out of the Kingdom; for if the Government were his Right, God forbid, but that he ſhould enjoy it, and be Admitted to the* Exerciſe *of it*; the Commons therefore concluded, *That the Notion of the Lords Managers, Admitting King* James *to have the* Right *to govern, and yet to take away from him the* Exerciſe *of Government, muſt needs be in the Lords a coercive and unlawful Proceeding.*

But the Commons inſiſted, *That the Kingſhip was* not *now King* James's *Due, or* Right; *for that he, by his* Subverſion *of the Conſtitution, his Breaking the* Original Contract, *and his Violation of the Fundamental Laws, had Renounced the Government; and that That* Renunciation, *had put him by his Right; and that therefore his Right was, by his own Acts, gone from him; which made an* Extraordinary *Caſe, wherein the Lords and Commons might lawfully proceed, to ſettle the Peace and Welfare of the Nation, and to* Reinſtitute *the Monarchical or Regal Eſtate; and that this Proceeding would be grounded,* not *upon their own Acts, but upon the* Wilful Breaches *of the Conſtitution made by King* James *himſelf, and upon his own Dereliction.*

As to the Third Objection made by the Lords Managers, *That King* James *might Renounce for himſelf, and might ſever his* Natural *Perſon, from his* Political *Capacity, but could not Defeat his Heirs, and that therefore although the Throne were* Vacant *of King* James, *yet Allegiance was due, even in his Life-time, to the Perſon, to whom the Right of* Succeſſion *did belong, becauſe the Monarchy is* Hereditary, *and the Law knows no* Interregnum;

The Commons Argued, *That although by the Law, the Monarchy be Hereditary, and ſhall, in an ordinary Way,* Deſcend *to the Heir, yet there is a* Maxim *in Law, as certain as the other, which ſtops the ordinary Courſe; for no Perſon*

can pretend to be King James's *Heir, while he is Living*, Nemo eſt Hæres viventis; *if he had any Heir, it was* in Nubibus, *the Law knows of none; for no* Deſcent *could be 'till his Death, and, What ſhall the Nation do 'till then? for when there is no Government*, no Law *can be Executed*, no Debts *can be compelled to be paid*, no Offences *can be puniſhed, no one can tell what to do, either to obtain his Right, or defend himſelf from Wrong, for both Lords and Commons have Voted themſelves to be* without Government.

The Points in Queſtion, being thus freely and fully debated in this Conference, the Commons peremptorily Demanded of the Lords Managers, an Anſwer to theſe two Queſtions.

I. *If the Throne was not Vacant,* **Who filled it?**

II. *Whether any Perſon could be* Heir *to King* James *whilſt he was* Living? *and if yea, Who that Perſon was, that was King* James's *Heir, and ſo was* (according to Them) *Actual King.*

But the Lords Managers, being not able to Anſwer theſe Queſtions, the Managers return'd, and reported the Conference to each of the two Houſes; and thereupon the Lords Retracted their Amendments, and Agreed to the Vote of the Commons, without any Alterations.

SECT. XVI.

THE Lords and Commons having thus Voted the Nation to be without Government, and the Throne *Vacant* of a King, they proceeded to **Reinſtitute** the Monarchical or Regal Eſtate, and to Reſtore the Government; and for that End, they framed an Inſtrument to this Effect, *Whereas the late King* James II. *by the Aſſiſtance of divers* **Evil** *Counſellors, Judges, and Miniſters, Employed by him, did* **Endeavour** *to Subvert and Extirpate the Proteſtant Religion, and the Laws and Liberties of this Kingdom*; By *Aſſuming and Exerciſing a Power of Diſpenſing with, and Suſpending of Laws, and the Execution of Laws*; By *Proſecuting the Biſhops, for Petitioning only to be Excuſed from Concurring to the ſaid Aſſumed Power*; By *Iſſuing and cauſing to be Executed, a High Commiſſion Court,*

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in Eccleſiaſtical Cauſes; By *Levying Money, by Pretence of Prerogative, without a Grant thereof in Parliament*; By *Raiſing a Standing Army in Time of Peace, without Conſent of Parliament*; By *Arming Papiſts, and Diſarming Proteſtants*; By *Violating the Freedom of Elections of Members to Serve in Parliament*; By *Proſecutions in Inferior Courts, for Matters and Cauſes Cognizable only in Parliament*: That *of late Years, Unqualified Perſons had been Returned on Juries, and particularly in Trials for High Treaſon, which were not Freeholders*; That *Exceſſive Bail had been Required*; That *Exceſſive Fines had been Impoſed, and Cruel Puniſhments Inflicted*; That *ſeveral Grants and Promiſes had been made of Fines and Forfeitures, before Conviction*: All which were utterly, and directly, contrary to the known Laws and Statutes, and Freedom of this Realm.

N. B. *Theſe* **Endeavours** *were Charged, not upon the Miniſters, but poſitively and directly,* upon the King himſelf, *viz. That He, by the Aſſiſtance of* Evil *Counſellors,* Evil *Judges, and* Evil *Miniſters, Employed by him, made theſe* Endeavours.

That the Lords and Commons, being Aſſembled in a full and free Repreſentative of this Nation, did, in the firſt Place, (as their Anceſtors, in like Caſe, had uſually done) for the Vindicating and Aſſerting their Antient Rights and Privileges, Declare,

That *the pretended Power of Suſpending Laws, by Regal Authority only, was* Illegal; That *the pretended Power of Diſpenſing with Laws, by Regal Authority only, was* Illegal; That *the Commiſſion for Eccleſiaſtical Cauſes, and all other Commiſſions of like Nature, were* Illegal; That *Levying Money, by Pretence of Prerogative, without a Grant thereof in Parliament, was* Illegal; That *it was the Right of the Subjects, to Petition the King, and all Obſtructions thereof, were* Illegal; That *the Raiſing, or Keeping a Standing Army, in Time of Peace, unleſs with Conſent of Parliament, was againſt Law*; That *Proteſtant Subjects may have Arms for their Defence, ſuitable to their Conditions*; That *Elections of Members, to Serve in Parliament, ought to be Free*; That *Freedom of Speech, or Proceedings in Parliament, ought not to be Queſtioned, in any Place out of Parliament*; That *Exceſſive Bail ought not to be Required, nor Exceſſive Fines Impoſed, nor Cruel Puniſh-*

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ments Inflicted; That *Jurors, in Tryals for High Treaſon, ought to be Freeholders*; That *all Grants and Promiſes of Forfeitures, before Conviction, are* Illegal; And, That *for Redreſs of Grievances, and other Matters, Parliaments ought to be held* **Frequently**.

And the Lords and Commons did Claim, and Inſiſt upon, the Premiſes, as their undoubted Rights and Liberties; and that no Judgments, or Proceedings, to the Prejudice of the **People** in the ſaid Premiſes, ought to be drawn into Conſequence, or Example.

The Lords and Commons, therefore, in order to **Reinſtitute** the Monarchical or Regal Eſtate, did Reſolve, *That* William *and* Mary, *Prince and Princeſs of* Orange, *ſhould* **Be**, *and be, Declared King and Queen of* England; &c. *To hold the Crown and Royal Dignity to them, during their Lives, and the Life of the longer Liver of them; and that the ſole and full* **Exercise** *of the Regal Power, ſhould be in, and Exerciſed by, the ſaid Prince, during their Joint Lives; and that after their Deceaſes, the Crown and Royal Dignity, ſhould be to the Heirs of the Body of the ſaid Princeſs; and for Default of ſuch Iſſue, to her Siſter Princeſs* Ann *of* Denmark, *and the Heirs of her Body; and for Default of ſuch Iſſue, to the Heirs of the Body of the ſaid* William *Prince of* Orange.

And the Lords and Commons did pray the ſaid Prince and Princeſs of *Orange*, to **Accept** the ſame accordingly; and the ſaid Prince and Princeſs, did *Accept* the Crown and Royal Dignity, according to the ſaid Reſolution and Deſire.

This Inſtrument of Government, and all the Articles of it, were reduced into an Act of Parliament, Intituled, *An Act Declaring the Rights and Liberties of the Subject, and Setling the Succeſſion of the Crown*, and was paſſed into a Law, in the firſt Year of the Reign of King *William* and Queen *Mary*, *Chap.* II. Whereby it was Declared and Enacted, *That all the Rights and Liberties Aſſerted and Claimed in the ſaid Declaration, were the True, Antient, and Indubitable Rights and Liberties of the* People *of this Kingdom, and ſo ſhould be Allowed, Adjudged, and taken to be, and that all the Particulars aforeſaid, ſhould be holden, and obſerved, and all Officers and Miniſters*

Miniſters whatſoever, ſhould ſerve the Kings of this Realm, according to the ſame, in all Times to come.

And by the ſaid Act of Parliament, it was Declared, *That it is* **Inconſiſtent** *with the Safety and Welfare of this Proteſtant Kingdom, to be Governed by a* Popiſh *Prince; and therefore Proviſion was thereby made, that all Perſons of the* Popiſh *Religion, or marrying Papiſts, ſhould be* **Excluded** *from this Crown and Government.*

SECT. XVII.

AND thus, after this Convulſion and Revolution, the Original Conſtitution or Fundamental Form of this Government, was, by *Reinſtituting* the Monarchical Eſtate, again Reſtored and Settled upon the Antient *Baſis*, and Legal Foundation, and the Wounds and Breaches of it were, by theſe Means, Healed and Repaired, and the whole Proceeding merits well the Name of a *Reſtoration.*

But Objections have been made, That the Lords and Commons did not Declare in Expreſs Words, *That they* **Diſturbed** *Arbitrary Power, or Coerced, or Purſued out of the Kingdom, any Arbitrary or Illegal Power in Government.*

The Anſwer is, *That the Lords and Commons knew, that their* Diſturbance *and Purſuit of Arbitrary Power, was ſo Viſible to all the World, that ſuch a Declaration was as needleſs, as to Declare,* That they themſelves were then Living Men.

After the Deaths of Queen *Mary*, and the Duke of *Glouceſter*, King *William* Recommended to his Parliament, the Making a further Proviſion for the *Succeſſion* of the Crown, in the Proteſtant Line.

And it being Abſolutely neceſſary for the Safety and Quiet of the Kingdom, to obviate all Doubts and Contentions in the **Succeſſion**, ariſing from pretended Titles to the Crown, and to maintain a Certainty in the *Succeſſion* thereof, by an Act of Parliament therefore made in the 12th Year of King *William's* Reign, the moſt Excellent Princeſs *Sophia*, Daughter of *Elizabeth* Queen of *Bohemia*, who was Daughter of King *James* I.

was Declared to be the next in *Succeſſion* to the Crown and Government of the Proteſtant Line, after the Demiſe of King *William*, and the Princeſs *Anne* of *Denmark*, without Iſſue.

And it was thereby Enacted, Declared, and Limited, *That the Crown and Regal Dignity ſhould Remain to the Princeſs* Sophia, *and the Heirs of her Body*, being Proteſtants.

And the Lords and Commons did, by this Act, Promiſe to Maintain and Support the ſaid Princeſs *Sophia*, and the Heirs of her Body, *being Proteſtants*, according to this Limitation, to the Utmoſt of their Power, with their Lives and Eſtates, againſt all Perſons that ſhould Attempt any thing to the Contrary.

Her late Majeſty Queen *Anne*, Confirmed this Settlement of the *Succeſſion*, by giving the Royal Aſſent to an Act of Parliament, whereby all Attempts to Hinder or Deprive the Princeſs *Sophia*, or the Heirs of her Body, *being Proteſtants*, were made **High Treaſon.**

This Settlement of the *Sueceſſion*, is alſo made the Second Article of that **Union** with *Scotland*, which Queen *Anne* Accounted the *Glory* of all her Atchievements.

The Crown therefore Deſcended to our Sovereign Lord King *George*, as Son and Heir of the Princeſs *Sophia*, according to the *Limited Hereditary Right*, by the Firſt and Original Conſtitution Inſtituted.

As to the Queſtions about Breaches of the Original Conſtitutions, which may be ſuppoſed to be ſeparately made by the Lords, or by the Commons, and about thoſe which may be ſuppoſed to be made *Jointly*, by the King, Lords, and Commons, it is apprehended, That for the better Connecting of the Argument, thoſe Queſtions ſhould be Poſtpon'd, 'till the Obſervations upon the Whole, come to be laid together; and, in the mean Time, to proceed to the Fourth General Head, at firſt propoſed.

CHAP.

CHAP. XII.

PROVING, *That the late* REVOLUTION *in* 1688, *and the* Disturbance *of* Arbitrary Power *by which it was Effected, and the Placing on the Throne the Prince of* ORANGE, &c. *and the Limitation of the Crown and Government to the* Now-Reigning Protestant Heirs *of the* Royal Family, *were Authorized by the* Original Constitutions *and* Fundamental Form *of this Government.*

SECT. I.

THE Legality of these Matters here Undertaken to be proved, is no more than the necessary Efflux from the Premises before stated, because every Evidence of the Original Constitution before Described, is a Proof of the Lawfulness of that **Disturbance**, and of that Calling to the Throne of the Prince of *Orange*, &c.

For if the Constitution did make the *Disturbance* of Arbitrary Power Lawful, and even Necessary for its own Self-Defence and Preservation, and if such *Disturbance* hath been in all Times, when Necessity required, Used, Approved, and Avowed; and

if

if the Kings *Henry* IV, V, VI, VII. who upon ſuch *Diſturbance* were by the two Eſtates of Lords and Commons, raiſed to, and placed in the Throne; I ſay, if theſe Kings ſtand in equal Rank, Degree, and Luſtre, with any of our other Kings; and if the Parliaments by them called, and the Acts of Parliament to which they gave the Royal Aſſent, are Embodied with our Laws, and equal in Point of Authority, Validity, and Force with any Parliaments called and held by, and with any Acts of Parliament, to which our other Kings gave the Royal Aſſent; and if theſe Facts as to Parliaments and Acts of Parliament, are ſo Evident, Undoubted and Inconteſtible, that no Man can preſume to gainſay or deny them; Then, who can ſay, That the Legal Authority of the Kings of this Realm is not Derived from this Original Conſtitution? Who can gainſay, That a Government by Arbitrary Power is a Government different from, and foreign to the Fundamental Form of the *Britiſh* Government? or, can ſay, That ſuch Arbitrary Power may not (as an Enemy to the *Britiſh* Nation, and as having no Legal Authority) when all other Means fail, be *Diſturbed* and Removed?

But the Government, as Aſſumed and Exerciſed by King *James* II. was Arbitrary, and was Deſtructive to the Hereditary Rights and Freedom of the *Britiſh* Nation, and did **Bear down** the People towards an abject Slavery.

It was therefore Lawful, according to the Original Conſtitution, and the Laws of the Land (in that Caſe of Neceſſity) to *Diſturb* ſuch Arbitrary Power, and all Deſpotic Government ſupported by it.

From which (as a neceſſary Conſequence) the Authority of the two Eſtates of the Lords and Commons Aſſembled in 1688, to *Diſturb* that Power, and to Reſtore the Antient Form of the *Britiſh* Government, by Declaring the Throne Vacant, and by Reinſtituting the Regal Eſtate in Placing on the Throne the Prince of *Orange*, and *Declaring* him to be King, appears in that Caſe of Neceſſity to be Legal, and *de Jure*, and ſtands Vindicated and Juſtified by the Fundamental Laws of *Great-Britain*.

The Subſequent Limitation of the Crown, by future Parliaments, to the Proteſtant Reigning Heirs (or Branch) of the Royal Family,

Family, and the Authority of thoſe Parliaments by which this Limitation was Directed, Enacted and Eſtabliſhed, ſtands upon the ſame Reaſons and Foundations Juſtified and Vindicated as Juſt, Legal and Obligatory to all the Subjects of this Nation according to the Original Conſtitution, and the Tenor of all Antiquity, and according to the Antient and Conſtant Uſage down to this Time.

SECT. II.

IT is from the Premiſes therefore inconteſtible and beyond all Contradiction, That the Parliaments called and held by King *William* III. and Queen *Anne*, and the Acts of Parliament to which they gave the Royal Aſſent, have as great and undoubted Force and Authority, as the Parliaments called and held by the Kings *Henry* IV, V, VI, and VII. and the Acts of Parliament to which they gave the Royal Aſſent: Which Parliaments and Acts of Parliament, as to their Authority and Validity, never were, and therefore never could be Doubted or Queſtioned.

But above all other Evidences, the Statute of 1 *E.* IV. *cap.* 1. is the ſtrongeſt Proof of what is here undertaken to be proved; for ſome of this King's Flatterers, immediately after his Acceſſion, promoted the Paſſing of an Act, in his firſt Parliament, to *Confirm* the Judicial Proceedings and other Regal Acts which had been Tranſacted in the Reigns of the Three *Henries*, implying therein, *That they were Voidable, and needed a Confirmation*; in which Bill it was mentioned, *That thoſe three Kings were Kings* de Facto, & non de Jure; and it was therefore inferred, *That all the Acts which thoſe Kings and their Parliaments had done in their Reigns, were Queſtionable in Law, as Invalid, and Wanted a* Confirmation *to be made by this King* Edward IV. *and his Parliament*; as if this King were a King made of better Materials than thoſe former Kings.

This Attempt brought the Queſtion fairly into Debate; *Whether the three* Henries *and their Parliaments, were Kings and Parliaments* de Facto, & non de Jure, *or*, de Facto, & de Jure, *both*?

It was Argued againſt the Bill, *That the Space of Time between the Abdication of King* Richard II. *in the Year* 1399, *for Breaches of the Conſtitution, and the Abdication of King* Henry VI. *in the Year* 1460, *for Breaches of the late Statute of the* 39*th Year of his Reign, for ſetling the* Succeſſion, *contained Sixty-one Years, five Months, and two Days: That the Purport of the Bill now Depending, was to declare to the World, That the two Eſtates of Lords and Commons, who declared the Throne* Vacant *by Reaſon of King* Richard *the Second's Abdication, were an* Aſſembly *of Lords and Commons* de Facto, & non de Jure; *and that the* Houſe of Lords, *to whom* Richard *Duke of* York, *lately ſued for Juſtice and Judgment, to Recover the Crown and Government, were a* Houſe of Lords de Facto, & non de Jure; *and that the late Statute for ſetling the Succeſſion, by Virtue whereof, this King* Edward IV. *Acceded to the Government, were an Aſſembly of King, Lords and Commons* de Facto, & non de Jure; *All which Pretences were then Alledged to be not only a Diſowning and Diſclaiming, but a Condemning the Hereditary* Right and Powers *of the two Eſtates of Lords and Commons, which ought not to be Imagined or Endured.*

It was Argued, *That when a King Abdicates the Government, he can have no Heir to ſucceed him, becauſe he is* Living, *and that That was the Caſe when King* Richard II. *Abdicated the Government, by his Breaches of the Conſtitution; for the* Mortimers, *the next in Blood, could not be his Heirs, whilſt he, King* Richard II. Lived; *That the Throne, by his Abdication, became immediately* Vacant, *and no Perſon being his* Heir, *a* Chaſma *or total Defect of Government enſued: The Lords and Commons therefore, in Virtue of their Original Authority* de Jure, *Reſerved by the Conſtitution, had* **Reſtituted** *the Regal Eſtate, by placing on the Throne King* Henry IV. *Declaring,* That he ſhould have an Hereditary Right to him, and to the Heirs of his Body.

That this King Edward IV's *Title was,* of his own ſhewing, *founded on the ſaid Act of Parliament of* 39 H. VI. *for ſetling the* Succeſſion; *and that his Majeſty had, in this very Parliament, Recognized that Statute to be the Foundation of his* Right, *and conſequently to be a* Rightful Statute, *made by a Lawful Parliament of King, Lords and Commons; and therefore it was Concluded and Agreed, by the two Eſtates of Lords and Com-*

Commons now Aſſembled *in Parliament, That this King* Edward IV. *ſhould not have or Claim any Right or Title to the Government, other than by or under that Statute for ſetling the* Succeſſion; *and that the Acts of Parliament firſt Deviſed and Prepared by the two Eſtates of Lords and Commons in Parliament Aſſembled, and to which the three* Henries *gave the Royal Aſſent, ſhould not be* Confirmed, *or Blemiſhed with a Confirmation, becauſe they were* Good *without it, and needed no* Confirmation: *And, therefore, it was Moved and Agreed, That the* Confirmation *to be made by this Statute, ſhould not Extend to* Confirm (*i. e.* to Diſparage by a Confirmation) *any of the Things done by the Authority of Parliaments held in thoſe Kings Reigns. The Words are,* **Other than by the Authority of any Parliaments holden in any of their Times.**

To this Bill, or Act, Containing this *Exception* in the very Heart of it, King *Edward* IV. gave the Royal Aſſent, which was a Parliamentary and Judicial Determination, *That the Three Eſtates of King, Lords, and Commons, in the Parliaments Aſſembled by the Three* Henries, *between the Years* 1399, *and* 1460, *who made many Laws, or Acts of Parliament, were King, Lords, and Commons* **de Jure.**

The *Confirmation*, therefore, made by this Statute was Nugatory and Idle; for King *Edward* IV. was Neceſſitated (if he would have that ſpecious Act Paſs) to give his Royal Aſſent to it, with that *Exception* placed in the Body of it; and was alſo obliged to Stand by, and ſee the Acts of Parliament, to which thoſe Three Kings gave the Royal Aſſent, *Obeyed* and *Executed*, with as much Reſpect and Authority, as thoſe Acts, to which he himſelf gave the Royal Aſſent: From which it is obvious, That this Effort of King *Edward* IV. Carried in it no more than an Empty Sound of Reſentment: However, this very Attempt, made by King *Edward* IV. (257 Years ago) to *Diſparage* the Right of the Three *Henries*, and the Authority of them, and of their Parliaments, was, in the Event, the *Greateſt*, and moſt Authentick **Evidence**, to prove this Conſtitution; and that the Houſe of *York* Acceded to the Government, by a *Parliamentary Right*, and not by *Hereditary Right*; and that thoſe Three *Lancaſtrian* Kings, and their Parliaments, were Kings and Parliaments **de Jure**; for a King and Parliament that can make Laws or Statutes, to *Bind* Mens

Rights,

Rights, muſt, of Neceſſity, be *Rightful Kings*, and *Rightful* Parliaments, or Kings and Parliaments **de Jure**.

SECT. III.

TO this Evidence may be added, A Strong Proof Ariſing à **Conceſſis**, *viz.*

That when the Queſtion was brought into Debate, at the Proſecution of the Commons of *Great Britain*, before the Higheſt Judicature of the Houſe of Lords, in Parliament Aſſembled, in the Caſe of Doctor *Sacheverel*, whether the **Means** uſed to bring about the Revolution in 1688, *by Force of Arms*, were Lawful or Unjuſtifiable; All the Five Counſel of the Defendant Doctor *Sacheverel*, Conceded and Admitted, That thoſe **Means**, Conſiſting of Reſiſtance, or Diſturbance of Arbitrary Power, and the Removal of the then Arbitrary Government, were Lawful and *de Jure*, and not to be Controverted.

Now if it be Granted and Confeſſed (as it was) That thoſe **Forcible Means** were Lawful and *de Jure*, and were Warranted by the Conſtitution, and the Law of the Land; Then it follows, That the Arbitrary Exerciſe of the Regal Power, by King *James* II. was Unlawful, or elſe it could not be Lawful to *Diſturb* and Remove it.

SECT. IV.

IT alſo follows from thoſe Conceſſions, That King *James* could have no *Heir* to ſucceed him, becauſe he was *Living*; for no Perſon can be *Heir* to a Man that is *Living*; and that the Two Eſtates of Lords and Commons, in the Year 1688, being Aſſembled in a National Convention, to Reſtore the Conſtitution, and all the Acts which they did, to Supply the Defect of Government, by **Declaring** the Breaches of the Conſtitution, and the Abdication of the Government, and the Throne to be thereby Vacant, and in *Reinſtituting* the Regal or Monarchical Eſtate, by Placing on the Throne, the Prince and Princeſs of *Orange*, were Lawful and **de Jure**, and were the Natural Fruit and Effect of the Fundamental Conſtitution; for

for the Lords and Commons did, in that Caſe, do the ſame Thing, as their Anceſtors had, in the like Caſes, uſually done.

From thoſe Conceſſions, it likewiſe follows, That if it was (as in Fact it was) Lawful for the Lords and Commons, to *Diſturb* and Remove the Arbitrary Government, in the Year 1688, then all the *Limitations*, and Parliamentary Settlements, made of the *Succeſſion* to this Monarchy, in the preſent Reigning Proteſtant Heirs of the Royal Family, were made **de Jure**, and are Juſtified by the Fundamental Laws of *Great Britain*.

And ſince the Right of his Majeſty's Government, ſprings up from the very **Root** and Efficient Power of this Conſtitution, and from the Original *Form* of Government, and Laws of the Land, his Title therefore is **de Jure**, and Juſtified by the Fundamental Laws of *Great Britain*.

The Adverſaries may be Challenged to ſhew a good Reaſon, why the *Britiſh* Conſtitution, touching the Limited Hereditary Right of Succeſſion to the *Britiſh* Crown and Government, ſhould not be as Effectual, and Binding, and Venerable, in *Great Britain*, as in *France*; Their Limited Hereditary Right to the Heirs Male, by their Salique Law, or Conſtitution, is, by that Nation, held Sacred; by which the Proximity of Blood, and the Deſcent in the Right Line to the Heirs Female, is Removed and Excluded, and the Collateral Line of the Heirs Male, Preferred, and Called to that Government; which is an Expreſs Limited Hereditary Right; and therefore, upon a Failure of Males, their Regal Succeſſors muſt neceſſarily be Reinſtituted.

But the moſt **Impregnable Proof** of King GEORGE's Right to this Crown and Government, is, That it is Twiſted and Complicated with the Hereditary Rights and Powers of the Two Eſtates of Lords and Commons; for no Houſe of Lords, or Houſe of Commons, can ever Entertain Notions of an Hereditary Right for a Popiſh Pretender, or for any future Pretenders, preferable to the preſent Eſtabliſhment *made by Themſelves*, purſuing therein, their Original Powers, *Reſerved* by the Conſtitution, *Until* ſuch Lords and Commons, firſt *Abdicate* and Diſclaim this Conſtitution, and their own Hereditary Rights, to **Diſturb** and Remove Arbitrary Power in Government, and **to Reinſtitute** the Regal Eſtate, when the Throne

becomes Vacant; which is a Thing *Unprecedented*, and not Imaginable: And therefore it may be Concluded, That ſuch a *Proteſtant* Houſe of Lords, and ſuch a *Proteſtant* Houſe of Commons, as will *Diſown* and *Condemn* their own Rights, and the *Jews Meſſiah*, will come **Together**: And as to the Adverſaries Notions of Introducing a Pretender by Foreign Forces, or by **Conqueſt** of the Parliament, it's hoped, That that is, like their other Pretenſions, Impracticable.

It is therefore obvious, That ſuch Perſons as ſhall Aſſert, *That the Popiſh, or any other, Pretender, hath a Right* (Hereditary, or otherwiſe) *to Govern* this Nation, doth, by that Aſſertion, **Aſſert**, *That the Lords and Commons have no Right to* Diſturb *Arbitrary Power, or to* Examine *the Breaches of the Conſtitution, or to* Supply *the Defect of Government, when the Throne is Vacant*; And, therefore, when the Lords and Commons Aſſert and Vindicate their *own Rights*, they Aſſert the Right of King *GEORGE*; and if they ſhould Forbear, or Decline to *Aſſert*, or *Maintain* His Right, they Deſert and Give up Their Own, in Regard Both their Rights are, in Law, ſo Coincident, that *Neither* of them can Subſiſt, without Conſiſting *Together*.

BREACHES

Supposed to be Made by the

THREE ESTATES.

SECT. XVIII. *of* CHAP. XI.

THE last Matter intended by this Essay, was to make some Political Remarks upon the whole System.

But before those Observations come to be made, it is requisite to Remember, what was postpon'd, *viz.* The Questions, *Whether some* **Breaches** *of the Original Constitution have not been made Separately by the Lords and Commons, or Jointly by the King, Lords and Commons.*

As to the Breaches supposed to be made, either by the House of Lords, or by the House of Commons, as Houses, there's no Memorial to be found, of any such Breaches made by either House of Parliament, except in the Cases before mentioned in the Act of Oblivion, *p.* 565. where *Those* who acted under Them, and under King *Charles* I. are placed in one and the same Predicament.

As

As to the Breaches ſuppoſed to be made Jointly, by the King, Lords, and Commons, there appear upon Record diverſe *Inſtances*, which may be Queſtionable; howſoever it may be ſaid of them, That thoſe *Inſtances* never continued long of any Validity, for ſuch of them as appeared to be of an immediate pernicious Conſequence, were, in a ſhort Time, Repealed, and the reſt by *Non-Uſer*, or Neglect, loſt their Vigour, and withered like Muſhrooms: Which Effects will appear from this ſhort Account of them.

By the Statute of 13 *Edw.* I. *cap.* 1. A Power was given to make Settlements of Lands, whereby an Indefeazible Hereditary Right in Families to Intailed Lands, was Eſtabliſhed, and Perpetuities created; by which Statute, the Power of *Alienation* given by the Conſtitution, was taken away, and a great Breach and Innovation, in that Part of it, was introduced.

But innumerable were the Inconveniencies that entred in at this Breach, inſomuch that the Nation, like the troubled Sea, never reſted, nor could its Uneaſineſs be removed or quieted, until it was diſcovered and found, that *Alienations* by common Recoveries were not Reſtrained by that Statute; but were as much out of it, as if they had been expreſly Excepted; by which Device, the Power of *Alienation* was, in ſome Meaſure, Reſtored, and Alienations by that Sort of Conveyances, though founded upon imaginary and *feigned Recoveries* over in Value, became ſo generally and univerſally favoured, that a Counſellor, who at the Bar of the Houſe of Peers, Attempted to Expoſe and Invalidate thoſe Fictitious Recoveries, was interrupted, and told, *That no Man ought to be heard, to advance or maintain a Poſition, that* Shook *all Mens Inheritances.*

And, afterwards, the Statutes of 4 *H.* VII. *cap.* 4. and 32 *H.* VIII. *cap.* 34. Authorizing Bars of Intails by Fines, with Proclamations, were Made and Edited; by which the Indefeazible Hereditary Right in Lands, and the Reſtriction of Aliening Lands Intailed, and the Power of *Alienations*, were ſo happily Qualified, and Reduced ſo near to the Old Standard, that the Original Conſtitution in that Particular, became not only very well Repaired, but much Improved.

It

It may be Remembred, That the Lord Keeper *Finch*, in the Year 1674, was pleaſed to ſay, *That the Statute of Intails was an Ambitious Act*; But this is certain, That the People were extremely fond of it, in regard it had ſecured to innocent Children their Eſtates from Forfeitures, when their Fathers were counted Offenders in High Treaſon, for no other Reaſon, but becauſe they Adhered ſometimes to that Side in the Conteſts between the Houſes of *York* and *Lancaſter*, which had the Misfortune to be Vanquiſhed, and ſometimes to the Side that ſucceſſively Defended this Conſtitution: However, thoſe Kings who became ſucceſsful, Attempted oftentimes by their Miniſters and Agents, to obtain and paſs an Act of Parliament, to make intailed Lands forfeitable for High Treaſon; But as often as thoſe Bills came into Parliament **Unmasked**, ſo often were they Rejected with Indignation; yet in the 26th Year of King *Henry* VIII. when the Animoſities of the People againſt the Pope's Proceedings were blown up to be Impetuous, a Bill was brought into Parliament, Declaring and Inſtituting many new Species of Treaſon, and new Sorts of Tryals for Treaſon, in Relation to Popiſh Conſpiracies; then did ſome *Cunning Stateſmen* take that Opportunity to couch in the End of that Bill, a *general and obſcure Clauſe*, whereby every Offender convicted of High Treaſon (without confining it to the New Treaſons) ſhould forfeit all his Lands, wherein he had any Eſtate of Inheritance; And the Country Members Behaving in thoſe Times, as in After-times, that is, confiding too much in the Sincerity of *Leading Stateſmen*, they unwarily paſſed that Bill, and in it that *Inſnaring* Clauſe, by which many Families, and even the Poſterity of ſome of thoſe *over-wiſe* Stateſmen, have been Extirpated.

After which, the Judges, in Favour of the Crown, have Adjudged Intailed Lands to be, by Virtue of that Controvertible Clauſe in the Statute, forfeited, becauſe the Words relating as well to High Treaſon, as to Lands of Inheritance, were, in both Caſes, General and Indefinite.

Thus was the Parliament, in this Caſe, *over-reached*, and that Saving Privilege, by thoſe Means, wreſted away; but by the late *Union* with *Scotland*, That Privilege is brought from the *North*, and *Planted* again in *South-Britain*, inſomuch, That now no Offender in High Treaſon, ſhall forfeit his Lands longer

than for his own Life; but this Law is not to take Place, ſooner than the End of three Years next after the preſent Pretender's Death: But when ſome Time-ſervers will again ſubſtract this Saving Privilege, cannot at preſent be imagined; but the old Proverb ſays, *That what Has been, May be.*

The Statute of 4 *E.* III. *cap.* 14. for holding a Parliament every Year, was, in Reſpect of the Trouble of Making New Elections, found Impracticable, and, by mutual Conſent of the King and People, laid aſide, and not uſed.

21 Ric. II. Cap. 12. The ſeveral Statutes of 21 *R.* II. *cap.* 12, 13, 14, 15, 16. before mentioned, in which the Lords and Commons Deprived themſelves of Freedom of Speech, and of that Glorious Power which the Conſtitution had Appropriated to them, to Deviſe, Move, and Introduce New Laws in Parliament, by Declaring theſe Things to be Treaſon, *viz.*

I. *The Deviſing, Moving, and Paſſing through the two Houſes, and afterwards, procuring the Royal Aſſent to be Given to an Act of Parliament, which was afterwards Surmized to be hurtful to the Regal Prerogative.*

II. *The Moving or Proceeding in either Houſe of Parliament, upon any Buſineſs or Matters before ſuch Articles, or Laws, as the King ſhould Exhibit and Limit, were firſt Diſpatched.*

III. *To Impeach any Miniſter or Judge, for any Offence, without, or againſt the King's Will.*

IV. *The Moving in Parliament to ſend for the Statute or Record, whereby King* Edward II. *had been Proceeded againſt, and the bringing of that Statute or Record into the Houſe of Commons, and Reading it in that Aſſembly;*

And more-eſpecially that Statute of 21 *R.* II. *cap.* 16. whereby the whole Legiſlative Power of the Parliament was *Delegated* and Lodged in this King, with twelve Lords and ſix Commoners, or any ſix of the Lords, and three of the Commoners: Theſe Statutes were notorious Breaches and Violations of the Original Conſtitution; for the Fundamental Rights and Powers of the two Eſtates of Lords and Commons, were Given up and Deſerted. The Wildneſs of them was Apparent, and the Fate of

of their Makers was (as is before Related) Precipitate and Fearful; and May it always be ſo, with ſuch Infringers and ſuch Infractions.

The Statute of 1 *H.* V. *cap.* 5. whereby it was Enacted, *That no Freeholder ſhould Vote in Elections for Knights of the Shire, unleſs he were Reſident in that County, where the Election was, on the Day of the Date of the Writ of Summons; and no Perſon ſhould be Elected a Knight of any Shire, nor a Burgeſs for any Borough to ſerve in Parliament, unleſs ſuch Perſon were Reſident in that Shire or Borough on the Day of the Date of the Writ of Summons;*

This Statute being an Infringement of the Original Privileges of one of the Three Eſtates, (to wit) the Houſe of Commons, was laid aſide as Erroneous, and as not founded on Reaſon, and therefore never was obſerved.

All the Statutes made for Keeping the Lands of the Dutchy of *Lancaſter*, Separate from thoſe of the Crown *Demeſnes*, with a Deſign, that if the Houſe of *Lancaſter* ſhould be Deprived of the Government, that then thoſe Lands ſhould Deſcend to the Heirs General of the *Lancaſtrian Houſe*, in Oppoſition to that Part of the Conſtitution, which Inſtitutes, *That Lands once Belonging to the Government, ſhall go with the Government, to whomſoever ſhall be the Poſſeſſor of it*: I ſay, *Thoſe Statutes proved Null, and of no Force; for the Dutchy Lands went with the Government, notwithſtanding the Crown and Government, came afterwards to another Branch of the Royal Family, that was not Heir at Law, in the* Lancaſtrian *Line.*

The Statute of 11 *H.* VII. *cap.* 3. whereby Authority was given to the Juſtices of the Peace (without any Tryal by a Jury) by their Diſcretions, to Hear and Determine all Offences againſt any Penal Statute then in Force, being directly contrary to the Original Conſtitution, Introduced ſuch Numerous and Incredible Oppreſſions and Deſtructions of the People, that *Empſon* and *Dudley*, for Executing it with Severity, were Indicted for High Treaſon, Attainted, and Hanged, for their Cruel Diligence, and the Statute it ſelf was Repealed, 1 *H.* VIII. *cap.* 6.

The

The Statute of 26 *H.* VIII. *cap.* 10. which *Delegated* to the King, during his Life, *Power* by his Proclamations, firſt to Repeal, and after to Revive, as he thought fit, certain Acts of Parliament, touching the Importation of Wines;

The Statute of 28 *H.* VIII. *cap.* 7. which *Delegated* to the King, *Power*, by his Letters Patents, under the Great Seal, or by his laſt Will and Teſtament, to Diſpoſe of the Succeſſion to this Crown and Government, as he thought fit.

The Statute of 28 *H.* VIII. *cap.* 17. which *Delegated* to all ſucceeding Kings, who ſhould Accede to the Crown and Government, under the Age of Twenty-four Years, *Power* at, or after ſuch their Age of Twenty-four Years, to Repeal and Diſannul by their Letters Patents, under the Great Seal, all, or any, of the Acts of Parliament, which ſhould be Made and Paſſed in their Reigns, whilſt they were under that Age of Twenty-four;

The Statute of 31 *H.* VIII. *cap.* 8. which Delegated to the King, *Power* to make Laws by his Proclamations, with the Advice of his Council, of Equal Authority and Force, with Acts of Parliament:

All theſe monſtrous Powers, were Part of that Eſſence of the Legiſlative, or Arbitrary Power, which, by the Original Conſtitution, was to Reſide in the Two Eſtates of Lords and Commons; and therefore the Parting with, and *Delegating* Over, that *Power* to the King, to be by him ſolely, and alone, Exerciſed, was a Glaring Breach of that Truſt, which the Commons of *Britain* had Repoſed in their Repreſentatives.

The Statutes of 3 *H.* VII. *cap.* 1. and the Statute of 3 *H.* VIII. *cap.* 20. which Erected and Continued the Court of *Star-Chamber*, and the Statute of 1 *Eliz. cap.* 1. giving Power to the Crown, to Erect High Commiſſion Courts, in Eccleſiaſtical Cauſes, did all of them Impower the Crown, to Exerciſe Imperial Juriſdictions in the Adminiſtration of Juſtice, and did tend to the Enervating the Original Conſtitutions and Laws of the Land, and to Introduce Arbitrary Power; and, therefore, after Innumerable Troubles and Vexations had been by them brought

brought upon the People, these Statutes were Repealed and Determined.

The Statute of 13 *Elizabeth*, which Enacted, *That the Charter Granted by the Procurement of the Arbitrary Cardinal* Wolsey, *by King* Henry VIII. *in the 14th Year of his Reign, to the University of* Oxford, *should be Effectual in Law, to all Intents and Purposes, according to the Form, Words, and Meaning thereof, as fully and largely, as if the same Charter had been Recited* Verbatim *in that Statute*; for by that Charter, the King, at the Prayer of the Cardinal, Granted to the Chancellor, Masters, and Schollars, of *Oxford*, full *Cognizance* and Power to **Hear and Determine** all Causes Arising within that University, wherein any Privileged Person was Concerned, *Either according to their own Statutes and Customs*, or according to the Law of the Land, *at their Will and Pleasure*; and that no Judge of the *King's-Bench*, nor any other Common Law Judge, should *Intermeddle*; and if such Judges should **Presume** to Meddle therein, then such Judges should, upon the Certificate of the Chancellor of *Oxford*, supersede such Proceedings, and the Party procuring such Interfering, should be Chastized and Punished, before, and by, the Chancellor, *&c.* of *Oxford*.

This Charter was obtained by the Cardinal, at the Time when he was Meditating how to Introduce the **Imperial** Laws, and therefore he imagined, That the surest Way to Compass that Design, was to begin its Institution in the *Fountains of Knowledge and Learning*, and, pursuant to the Cardinal's *Craft*, Care was taken, that this Statute should be kept Private, and that no Notice thereof should be Printed; for not so much as the bare Title of it, appears in any of our Statute Books, which proves, that some Art was used in the Concealment, that looks Mysterious.

But this is obvious, That this Statute hath caused the Infusing into those Scholars, the Principles of the **Imperial** Law, which appear before, in Page 337, to be Arbitrary, and miserably Destructive to this Constitution, and the Laws of *Britain*; and therefore the *Planting* in the great Schools of the Nation this Foreign Weed, may be Esteemed an Eminent Breach of the Constitution; It is therefore hoped, the same Powers that made a Mistake in Passing that Law, will, in due Time,

Rectify that Miſtake, and prevent the Spreading and Propagating of thoſe pernicious Principles of Government, which the Imperial Laws have already Diſſeminated.

The Statute of 16 *Charles* I. *cap.* 1. which Lodged a Power in the Chancellor (in Caſe of the King's Default) to Call Parliaments; and if he failed, then in the Peers, or any Twelve of them; and if they failed, then in the Sheriffs; and if they failed, then in the Freeholders, *&c.* was a direct Breach of the Original Conſtitution; for it Introduced into the Monarchy, a kind of Republick, by Setting up a ſupreme Power, beſides the Regal Power, and Inconſiſtent with it.

The Statute of 16 *Charles* I. *cap.* 5. whereby it was Enacted, *That that Parliament then Sitting, ſhould not be Diſſolved, Prorogued, or Adjourned, but by Act of Parliament,* was another Breach of that Conſtitution, which had Originally Eſtabliſhed the King's Prerogative in that Particular; and therefore theſe two Acts were, early in the next Reign, Repealed.

The Statute of 13 and 14 *Charles* II. *cap.* 3. §. 23. which gave to the King, Power to Raiſe what Money he pleaſed, during the Space of Three Years, to be Accounted from the 25th Day of *June*, 1662, was a Breach of a Dangerous Complexion: Happy it was for the Nation, that this Power did not fall into the Hands of a Prince, Ambitious and Enterprizing; the Commons (who juſtly boaſt of their Fundamental and Hereditary Privilege of being the ſole Givers of Money) might, in that Caſe, have never been again Asked to Grant an Aid of that Nature.

The Statute of 12 *Charles* II. *cap.* 30. which Declares, *That by the Undoubted and Fundamental Laws of this Kingdom, the People never had, nor can have, any Coercive Power Over the Kings of this Realm,* is Difficult to be rightly Underſtood; for if this Act means the King's Natural Perſon, or means the King's Governing Authority, according to the Conſtitution, and the Laws of the Land, there's no doubt, but the Declaration is true, becauſe his Perſon is Exempted from all Coercion and Violence, and his Legal Authority is, by this Conſtitution, made Irreſiſtible; but if this Act means Arbitrary Power, Aſſumed and Exerciſed upon the Foot of Regal Authority (as it's probable King *James* II. underſtood it) then it is Queſtionable,

Queſtionable, whether this Act is, or is not, a Breach of the Conſtitution; for King *James* found it of little Force or Value, within leſs than Thirty Years after the Making, and even at a Time, when he ſtood in moſt Need of its Aſſiſtance.

The Preamble, or Recital, of the Statute of 13 *Charles* II. *cap.* 6. (in theſe Words, *Foraſmuch as Both, or Either, Houſes of Parliament, cannot, nor Lawfully may, Raiſe or Levy any* Defenſive *War againſt the King*) is Dark and Difficult to be rightly underſtood; becauſe the Word **Defenſive**, Naturally implies, a War Offenſive, it being impoſſible in Nature, that there ſhould be a *Defenſive* War, unleſs there be firſt a War *Offenſive*: Now if this Recital ſhould have this Meaning, *viz. That the King may make an* Offenſive *War againſt the Two Houſes of Parliament, but that the Two Houſes may not by War* **Defend** *themſelves againſt ſuch an* Offenſive *War made upon them*, then the Recital is Queſtionable and Debatable, becauſe ſuch a Meaning is Contradictory to the Natural and Common Senſe of Mankind, and to the very Light and Truth itſelf, for *Self-Defence* is Nature's Self: This Recital, therefore, diſagreeing with that Part of the Conſtitution, which Denies Power to, and Diſables Both, or Either, Houſes of Parliament, by Declarations, Recitals, or otherwiſe, to Enſlave the People, is Debateable and Doubtful, becauſe it is Inconſiſtent with, and Contradictory to, the Proceedings of this Nation, in all Times, and eſpecially to thoſe Proceedings in Government, before Remembred.

The laſt Queſtionable Breach of this Nature, is 1 *Annæ*, which Reſtrains the Crown from Alienation of Lands, for longer Time than Thirty-one Years; for, if what *Britannus* ſo long ago ſaid of ſuch a Reſtriction, be True, then it is Debatable, whether this Statute doth not carry in its Belly, not only Dangerous Seeds for future Servitude, but a plain Method how (by Legal Means) to Acquire Arbitrary Power; And, therefore, if that ſhall appear to be the Caſe, it is hoped, That this Statute will have the ſame Fate, as all the Reſt have had, which Tended to the ſame Inconveniencies.

But it may be Added, That it is Queſtionable and Debateable, whether thoſe Numerous Acts of Parliament, whereby the Juſtices of the Peace are Impowered to Convict Men in a Summary Way without Tryal, are Inconvenient, or not, becauſe

cauſe many Juſtices, apprehending themſelves to be Armed with Power and Impunity, do Aſſume the Power to take Informations, and Convict their Fellow-Subjects, without Exhibiting any Charge againſt them, without Summoning them to Anſwer, and without permitting them to See their Accuſers, or to Know, or See, or Examine, Face to Face, the Witneſſes againſt them; and ſo Condemn them Unheard.

It is Apprehended, That the Want of Inſerting into ſuch Acts of Parliament as Introduce New Laws, eſpecially if they Concern the Government, the uſual Clauſe to make them Temporary, or Probationary, is a great Hurt to, if not a Breach of, the Conſtitution; for ſome Laws made at firſt perpetual, have been made Uſe of to Grieve the People, and yet no Remedy can be obtained, but what muſt Reſult from a Diſſolution of Government; Therefore, if a Law were made, requiring, That a Temporary Clauſe ſhould be Inſerted in every ſuch Bill, at the firſt Bringing it into either Houſe of Parliament, but ſubject, upon Debate, to be Expunged, it might probably prevent thoſe Inconveniencies, of which many Complain.

OBSERVATIONS

On the Aforegoing

SYSTEM.

CHAP. XIII.

SECT. I.

IN the Order propoſed, the Remarks on this whole Syſtem, come now to be made; and from the Premiſes, theſe Things may be Enquired of and obſerved, *viz.*

If the Matters aforeſaid, ſtand proved by ſuch Proofs as are, to reaſonable Men, Satisfactory, and cannot be Diſproved by any Proofs of Equal Authority, then what muſt we Judge of the Noble Hiſtorian, or of his Publiſhers, when he, in the End of his Third Book, of the Firſt Volume, is pleaſed to Aſſert, *That when King* Charles I. *beſides his Quitting the Long-Uſed* Right *of Laying Impoſitions upon Foreign Trade in the Preamble of the Bill for Tonnage and Poundage mentioned*; *I ſay, when his*

Majeſty gave the Royal Aſſent to the Statute for Declaring Illegal the Proceedings about **Ship-Money**, *the King frankly parted with a* **Right** *Vindicated by all the Judges of* England: it is plain, therefore, from this Aſſertion, That the Hiſtorian's Opinion and Judgment was, (if it were really his) That King *Charles* had a *Right* by his Regal Power, and, as he was King, to **Impoſe** Taxes, and Levy what Money he pleaſed, upon the People, becauſe, he Affirms, This *Right* was Vindicated, which could not be, unleſs the Thing *Vindicated* had an Exiſtence before the *Vindication*: He likewiſe ſays, The King *Parted* with it, which could not poſſibly be, unleſs he was before Legally poſſeſſed of it, as a *Right*: Therefore, if the Original Conſtitution did Exclude all our Kings from the Power, and did deny them the Authority to **Impoſe** Taxes, or Levy Money by Pretence of the Regal or Sovereign Power, then the Aſſuming of that *Power* by King *Charles*, was no *Right*, but was *Wrong*, and Arbitrary, and this Aſſertion of the Noble Hiſtorian, is Erroneous, tending to Undermine and **Subvert** the whole Conſtitution.

But ſince this Aſſertion is a flat Contradiction to other Parts of his Hiſtory, in which this *Power* of Levying the Ship-Money, is, as Appears before, in Pages 275, 513, Inveighed againſt as a New Thing **Never before known**, and as having in Law no Foundation, and the Judges themſelves, are in a Manner Inſulted and Aſperſed, as mere Tools to be made Uſe of as *Time-Servers*, and even as *Betrayers* of the Liberties and Freedom of their Country; it ſeems reaſonable to do Honour and Juſtice to this **Great Man**, from whoſe Knowledge and Integrity, ſo many Important Truths have been Tranſmitted (which otherwiſe had lain in Obſcurity) by Concluding, That this *Hiſtory* has Suffered a Caſtration of many Valuable Facts, and an Interpolation of many ſpurious Parts, ſuch as are thoſe Aſſertions now in Queſtion.

SECT. II.

IT ought to be Noted, That the late Editor of the Statutes at large, was Inſiduous, in not Printing at large the Statute of 40 *E.* III. which Deſcribes the Power of the **Firſt King**, nor the Statute of 11 *R.* II. *cap.* 1. Whereas he Printed at large the Statute

Statute of 1 *Henry* IV. *cap.* 4. by which that Statute of 11 *Richard* II. ſtands Eſtabliſhed, when it was ſo eaſy to print this Statute from the Printed Copy of it, in *Raſtall's* Statutes.

And alſo the ſame Editor was Culpablein not Printing, amongſt the Statutes at large, the Statute of 39 *Henry.* VI. Whereby the *Succeſſion* to the Crown was Limited to the Houſe of *York*, and by Virtue of which, *Edward* IV. a Prince of that Houſe, was placed in the Throne, and the Statute of 4 *Henry* VIII. concerning *Richard Stroud*, by which that Eſſential Privilege of Liberty of Speech in Parliament, is Declared and Eſtabliſhed;

Becauſe theſe Statutes do Exemplify ſome of the moſt Material Parts of the Conſtitution, *viz.* The Original Inſtitution of the *Three Eſtates* of King, Lords, and Commons; The Parliamentary *Limitation* of the *Succeſſion* to the Houſe of *York*; The **Hereditary Privilege** of *Diſturbing* Miniſters of Arbitrary Power; and the Great **Privilege** of Freedom and Liberty of Speech in Parliament; which laſt Act, touching *Richard Stroud*, although he only was Named, was Declared by the Parliament of 1667, to be a general Law, as appears in the Report or Law-Book, called *Crokes Charls.* Folio 609, and yet this Editor hath, by ſome Influence or other, omitted theſe three moſt Material Acts of Parliament, out of the Printed Statute-Book, which he was pleaſed to call, The Statutes at Large.

The late Editor was equally *Culpable*, for not Printing at large theſe Statutes (to wit) the Statute of 15 *E.* II. generally called *Exilium Hugonis de le Diſpenſer Patris & Filii*, not the Statute of *York*, made in the ſame 15 *E.* II. whereby that Statute of *Exilium Hugonis, &c.* was Repealed; becauſe it was made, not only without, but directly againſt the Conſent of all the Lords Spiritual; nor the Statute of 1 *E.* III. whereby that Repeal was Repealed; nor the Statute of 21 *R.* II. whereby the Statute of 1 *E.* III. was Repealed; nor the Statute of 1 *H.* IV. *cap.* 3. whereby all the Statutes and Proceedings of the Parliament of 21 *R.* II. were Repealed.

This Fault of the Editor appears the Greater, in that theſe Statutes do Exhibit the Grand Tranſactions before touch'd upon, relating to this State and Government; and would (if Printed) Evidence how this Government, after the moſt Dangerous Deviations,

viations, has, as naturally, as constantly, Return'd and Inclin'd to that Fundamental Centre of the Constitution, which, in its Origination was at First Formed and Statuted.

It is observable, That if King *John*'s *Magna-Charta* had not lain Concealed and Secreted, both the King and Parliament, in the Years 1641, and 1642, had not needed to *Resort* to such Reasons of State, as they Insisted on, in their Paper War against each other; That Statute would have Reduced to a much narrower Compass, their Argumentative Proceedings, because the People would have been better Apprized of the Legal Terms of the *Constitution*.

SECT. III.

IN this Chapter must be taken a Place to insert that Proof of the Constitution, which was, by an Over-sight, omitted out of the Chapter of Evidences, p. 133. The Part of the Constitution, which ought to have been there proved, is mentioned in page 48. *viz. That all Attempts and Endeavours to Subvert or Destroy any of the Rights, Powers, or Privileges of the two Estates of Lords and Commons should be Deemed Overt-Facts of Subverting this Fundamental Form of Government*; which Doubtless, are Crimes of the Highest Nature.

The Evidence to prove this Part of the Constitution (than which nothing can be stronger) is the Famous Act of Oblivion, passed at the Restoration, in the Year 1660; for that Act containing a General Pardon, the Devising and Introducing it into Parliament, was, by the Constitution Appropriated to the Regal Estate only; King *Charles* II. therefore, in Execution of his Right, did Devise and Frame that Statute Agreeably to the Known Laws, and the Constitution; for he fully knew, and was well Apprized, That the Two Estates of Lords and Commons, were **Essential and Vital Parts** of the Constitution, and that by the Fundamental Laws, the Government of *England* was, and ought to be, by King, Lords, and Commons; and that in the Time of his Royal Father, Evil Counsellors had formed Schemes, and made Attempts to Subvert and Extinguish the Rights, Powers, and Privileges of those Two Estates, and to Govern, and did Govern, without them; and that his late Majesty had unwarily given into those Measures: This King therefore did Devise that most Eminent Law, or Act of Oblivion,

vion, in this Form, *viz. That to the Intent no Crime whatsoever Committed againſt the two Eſtates of Lords and Commons ſhould ever Riſe in Judgment againſt the Offenders, it ſhould be Enacted, That All Treaſons, Offences, and Crimes Counſelled, Commanded, Acted or Done, by Virtue or Colour of any Command, Power, or Authority, Commiſſion, Warrant or Inſtructions from, or Derived Mediately, or Immediately from King* Charles I. *ſhould be Pardoned, Releaſed, Diſcharged, and put in Utter* **Oblivion**.

This Law or Statute, ſo Deviſed by King *Charles* II. was, by his Majeſty's Order, Introduced into the Houſe of Lords, who paſſed it, and ſent it to the Commons, who alſo Agreed to it; and thereupon the King gave the Royal Aſſent.

Objectors againſt the Letter and Meaning of this Statute, muſt be well furniſhed with three Qualifications:

1. With Great *Boldneſs*, when they ſhall preſume to ſay, either, *That this Act of Oblivion was not an Act Deviſed by King* Charles *himſelf*; or, *That, if it were, he Miſtook the Law, or the Conſtitution*; for it was ſo Apparently the King's own Act, That he himſelf, and no other, did, or could Deviſe it, or Introduce it into Parliament; the Lords or Commons might either of them have Rejected it; but neither of them could, by the Conſtitution, Alter it:

2. Theſe Objectors muſt be Furniſhed with Great **Immodeſty**, if they ſhould ſay, *His Majeſty Miſtook the Rights of his Crown.*

3. Theſe Objectors muſt be furniſhed with *Abſurd Notions*, if they ſhould preſume to ſay, *That this Part of the Act of Oblivion, is not the Law of the Land*; becauſe every Man's Conſent, and even the Objectors Conſent, is, by their Repreſentatives *Involved* in this Act of Parliament. Upon the whole, it may be Concluded, That this Part of the Conſtitution is, by this Evidence, not only well *Proved*, but *Approved*; **A Problem** therefore is Conſpicuous, *viz. Why the Misfortunes of One Side ſhould be ſo ſolemnly* Commemorated, *and thoſe of the Other* Obliviated; for, it is Apparent, beyond all Contradiction, That, by this Statute, All the Proceedings of the Parliament, before

they themſelves were, by Force and Violence, Expelled and Suppreſſed, and the Government Uſurped by the Army, do ſtand **Cleared** and **Juſtified.**

SECT. IV.

IT may be Obſerved, That when thoſe Unhappy Kings, *Richard* II. *Charles* I. and *James* II. were Aſpiring to Govern without Parliaments, the Means to Acquire that Power, were in their Meditations, *viz.* King *Richard,* by Inventing *New* Treaſons, in Order to take the Heads of thoſe Patriots who Croſſed his Deſigns; King *Charles,* by Inventing *New* Ways and Means to Impoſe Taxes, and Raiſe Money by his Regal Authority, without any Grant thereof in Parliament, in order to free himſelf from Parliamentary Complaints, and Inquiſitions for Grievances; And King *James* by Aſſuming a **Diſpenſing** Power to remove thoſe Laws that Croſſed the Ways of his Will and Pleaſure; I ſay, theſe Kings, with theſe Views, ſent to the Judges, Adminiſtring Juſtice in the ordinary Courts of Law, as to Counſellors Learned in the Fundamental Forms and Parts of the Conſtitution, to Inquire, *Whether their Undertakings were Lawful or not,* Hoping to gain Strength from a Favourable Anſwer of thoſe Sages.

But it is Surprizing, to find All theſe Counſellors, in their Succeſſive Generations, as Unfortunate, and as much *Miſtaken,* as were their Royal Maſters; for the *Judges,* in thoſe Succeſſive Caſes, in order to ſerve and pleaſe the Times, Anſwered and Adviſed, *That the Royal Enterprizes were Agreeable to the Conſtitution, and were Legal,* and therefore Encouraged them to Proceed and Proſper, Acting therein as *Legum Latores, non Expoſitores.*

But the Events Proved, That nothing could be a *Greater Infringement* of theſe Conſtitutions, nor more Fatal to thoſe ſeveral Kings, than thoſe Extrajudicial Oblations of the People's *Hereditary Rights* and *Privileges.*

SECT.

SECT. V.

THE Daring Aſſault made on the Conſtitution, by a **Decree** paſs'd in the Convocation of the Univerſity of *Oxford*, on the 21ſt Day of *July*, and preſented to King *Charles* II. and Publiſhed by Authority in the *London Gazette*, of *July* 26, 1683, had not been worthy of *Notice*, after it was, by Order of the Supreme Judicature, burnt by the Common Hangman, had not the Malevolence of it Survived the Execution; for it hath never yet been, by the Univerſity, either *Revoked* or *Diſowned*.

The Decree was thus,

The Vice Chancellor, Doctors, Proctors, and Maſters, being met in Convocation, concerning certain Printed Propoſitions, Repugnant to the Holy Scriptures, Decrees of Councils, Writeings of Fathers, the Faith and Profeſſion of the Primitive Church, and Deſtructive to Kingly Government, the Publick Peace, and the Laws of Nature, They unanimouſly Decreed and Determined, concerning theſe Printed Propoſitions, *viz.*

I. The Propoſition, *That there is a Mutual* **Contract** *Tacit, or Expreſs, between the King and People, concerning the Government of* England;

II. The Propoſition, *That the* **Sovereignty** *of* England, *Reſides in the Three Eſtates of King, Lords, and Commons*;

III. The Propoſition, *That Self-Preſervation is the Fundamental Law of Nature*;

IV. The Propoſition, *That* Paſſive Obedience *is not due, when the Things Commanded are againſt the Laws of our Country, and Tend to Subvert the Conſtitution*, in Manner following;

That Convocation Decreed and Judged, *All thoſe Propoſitions to be* **Falſe, Seditious, Impious,** *and* **Deſtructive,** *to the* Britiſh *Government, in Church and State*: They *Interdicted*

dicted the Reading of them, and Ordered the ſame to be *Burnt* by the Hands of their Marſhal, in the Court of their Schools; and Commanded, and *ſtrictly Injoined*, all Tutors, and Others, to whom the Care and **Truſt** of Inſtitution of Youth was Committed, That they ſhould diligently *Inſtruct* and *Ground* their Scholars in this *Doctrine* (which, in a manner, was, as they Averred, the Badge and Character of the Church of *England*) That Obedience to the King of *England*, wasto be Clear and **Abſolute**; and that *Britiſh* Subjects were not *Excepted* out of that Rule of *Abſolute* Obedience.

If this Decree was not really ſo deſigned, yet it looks like an **Overt-Fact**, to Subvert the Fundamental Form of Government in *Britain*; for the Univerſity Scholars, are to be Inſtructed and Grounded in that *Doctrine*; and from and by Gentlemen ſo Seaſoned, thoſe pernicious Principles in Government, which the Imperial Laws Authorize, have been *Diſſeminated* over the whole Nation.

It is Remarkable, That this **Decree** Paſſed at *Oxford*, on the very ſame Day, and about the very ſame Hour of that Day, as the Head of the Lord *Ruſſell*, for Holding the Four Propoſitions above Condemned, was Illegally, and Arbitrarily, **Struck off** in *Lincoln's-Inn-Fields*.

If the Colleges in the Univerſity are looked on as *Great Schools*; And if the Vice Chancellor, Doctors, Proctors, and Maſters, are Eſteemed as the Nation's Illuſtrious *School-Maſters*, to Inſtruct young Gentlemen in the Rudiments of Learning; And if they are Subſiſted as ſuch, by the *Benefactions* of their Founders; Then it may be Concluded, That their Aſſuming a **Power** to make this Decree, was an Indecent Proceeding, becauſe this Convocation took upon them to Unmake their Makers, and to Determine wherein the *Sovereignty* of this Kingdom Reſided; which was a *Learning*, wherewith it was never Intended they ſhould be Intruſted; neither was it Intended, that young Gentlemen ſhould be therein by them **Inſtructed**.

SECT.

SECT. VI.

IT is Obvious to Collect, That if the Perſecution of the *Diſſenting Proteſtants*, brought ſo much Weakneſs and Diſparagement on King *Charles* I. and on the Biſhops in his Reign, and ſo much **Loſs** to the Nation in thoſe Times, as is before Repreſented, then the preſent Indulgence and *Toleration*, will, on the contrary, produce equally as much Strength and Reputation to the Government, and Profit and Riches to the Nation, as were **Loſt** by the former Meaſures.

It is alſo Obſervable, That the Conſtitution hath not been more Strict and Careful of any thing, than of keeping the **Fountain** of Juſtice Unblemiſhed, and Clear from all Partiality or Corruption, occaſioned either by **Bribery**, Private Menaces, Letters, Secret Informations, Promiſes, or any other Byaſſes, *&c.* as may be ſeen in the Example of Sir *Thomas Wayland*, Chief Juſtice of the *Common Pleas*, who was Attainted of Felony, for Taking **Bribes**; for which his Lands and Goods were Forfeited, and he was *Baniſhed* the Kingdom, as Unworthy to Live in that State, againſt which he had ſo heinouſly *Offended*: *Pleas of the Parliament*, 18 *Edw.* I.

And in the Example of Sir *William Thorpe*, Chief Juſtice of the *King's-Bench*, in *Edward* III's Time, who having Taken of Five Perſons, Five ſeveral **Bribes**, which, in all, Amounted but to 100 *l.* was, for this Offence alone, Adjudged to be **Hanged**, and all his Lands and Goods Forfeited.

The Reaſon of this Judgment, is given in the Roll in theſe Words, *Quia prædictus* Willielmus Thorpe, *qui Sacramentum Domini Regis, erga Populum ſuum habuit ad Cuſtodiendum, fregit malirioſe falſe & Rebelliter, quantum in ipſo fuit*; Becauſe that he, as much as in him lay, had Broken the King's **Oath** made unto his People, which the King had **Intruſted** him withal.

There is this Notable Diſtinction made in that Judgment; that is, That this Judgment ſhould not be drawn into Example againſt any other Officers, who ſhould Break their Oaths, but againſt **Thoſe** only, *Qui prædictum Sacramentum fecerunt, &*

fregerunt, *& habent Leges* Angliæ *ad Cuſtodiendum*; that is, It ſhould be Reſtrained to the Judges Oaths only, who have the Laws *Entruſted* to them.

This Judgment was given 24 *Edward* III. But the next Year, in the Parliament 25 *Edward* III. It was Debated again in Parliament, Whether this Judgment was **Legal**, or not, *Et, nullo Contradicente*, it was Reſolved, To be Juſt, and according to the Law, and that the ſame Judgment may, and ought to be given, in Time to come, upon the like Occaſion.

This Caſe proves, That when any Judge, who is Intruſted with the Adminiſtration of Juſtice, wittingly Breaks his Oath (*i. e.* The King's Oath) the Offence is, in its own Nature, not only moſt Odious, but the Puniſhment Capital.

Theſe **Bribes** were taken by *Thorpe*, not in any Cauſe, or Queſtion of Right, depending between ordinary Suitors, to *prevent Juſtice*, by taking away one Man's Right, and giving it to another; but were taken at *Lincoln* Aſſizes, for Excuſing thoſe Five Perſons from being Outlawed upon Indictments for Felonies, and other Treſpaſſes, Proſecuted in the King's Name, by the Perſons Injured; The Conſequences whereof were, That the People who had ſuffered by thoſe Felonies and Treſpaſſes, were only Delayed in ſeeing Juſtice done upon *Thoſe* Wicked Men, by whom they had been Abuſed and Impoveriſhed; and, therefore, if this Miſdemeanor were an **Offence** ſo Heinous in the Chief Juſtice *Thorpe*, what ſhall be ſaid of thoſe Judges, who Publickly, and Avowedly, in Open Court, and in the Face of the Kingdom, *Broke* their own, and the King's Oaths, in the Caſes of *Ship-Money*, and the *Diſpenſing Power*, and that too, againſt the *Dictamen* of their own Conſciences?

SECT. VII.

IT is obſervable, That when the *Roman* Power Invaded and Subdued *Britain*, they did ſo Break and Maim the People, that when the *Romans* themſelves became Decrepid and Languiſhed, and, as it were, *Shrunk* out of the Nation, the *Britiſh* People could not Recover and Re-eſtabliſh their former Strength, but became an eaſy Prey, firſt to the *Saxons*, and after

after to the *Danes*, and last of all, to the *Normans*; and yet, nevertheless, those several *Victorious Nations*, found the *British* Laws so Excellent, and so well Poiz'd between the Governor and Governed, that they never **Imposed** or Introduced their Foreign Institutions, but Preferred and Embraced the *British*; which is an *Evidence* of the Strongest Nature, to prove the Excellency of our Fundamental Form of Government, and the rather, since the *Romans* Boasted of their own Laws, and *Imposed* them, as the **Best**, on all the Nations whom they Subdued (except *Britain*) but to the *British* Laws, they Conceded, and left them at their Departure, after 200 Years had Elapsed, in the same Form as they found them at their Accession. *Fortescue de Laudibus Legum* Angliæ, 38, 39.

SECT. VIII.

The part and Share which the Bishops have had in All the Breaches and Repairs of the Constitution, is too Material on both Sides to be Passed over, without Remembrance.

And therefore, As to the *Breaches* of the Constitution, *Peter de Rupibus*, Bishop of *Winchester*, in the Reign of King *Henry* the Third, is Represented to be an Unwearied Adversary; The whole Order of Bishops, in the Reign of King *Edward* II. by Claiming to be a *Fourth Estate*, Distinct from the Lords Temporal, and to have a **Negative** in Passing Laws, *Equal* with the Commons, or with the Lords, or even with the King himself, occasioned Innumerable Calamities; The Archbishop of *York*'s Share, in Subverting the Privileges of the Two Estates of Lords and Commons, in the Reign of King *Richard* II. was Extraordinary; but as to the Accession of Archbishop *Laud*, to the Grievances and Disorders in his Time, the same needs no Repetition.

As to the *Reparations* of, and the Asserting this Constitution; many Bishops are found to be Eminent Actors in those Commendable Efforts: *Jeffrey*, Archbishop of *York*, was the First Man who opposed King *John*'s Imposing Taxes by his Regal Authority; and, by his Opposition, the *Question was put in Issue*, to be Tryed between that King and the People.

Stephen

Stephen Langton, Archbiſhop of *Canterbury*, in the Reign of King *John*, Diſcovered to the Lords and Commons, in Parliament Aſſembled, the Charter of King *Henry* I. Containing the Grand Articles of the Conſtitution, and was a great Adviſer and Encourager of them, to obtain the Renewal of it at *Running-Mead*.

Thomas Arundell, Archbiſhop of *Canterbury*, was, in the Reign of King *Richard* II. a Great Aſſertor of the Hereditary Privileges of *Britons*, and a Sufferer for his Zeal and Activity in the Cauſe of Liberty.

But the Seven Biſhops in King *James* the Second's Reign, Exceeded all the former Patriots of the Epiſcopal Order; for they, with Great Courage and Fidelity to the Conſtitution, Controverted and put in *Iſſue* the Queſtion, Touching the *Diſpenſing Power*, and the *Right* of Petitioning to be Relieved in Caſes that Grieve the Subject; and having Paſſed, and Prevailed in, the Fiery Tryal, their *Firmneſs* Ripened the *Invitation* of the Prince of *Orange*, and Quickened the Reſolutions and Endeavours to Reſcue this Conſtitution, and to Diſturb and Remove that Arbitrary Power, by which it was oppreſſed.

The *Firmneſs* of the Biſhops, in that Critical and Hazardous Time, Continued Eminent; for when the Biſhops Refuſed King *James* to his Face, to Sign the Paper of *Abhorrence* of the Prince's intended Invaſion, they might very well Conclude; That if the Prince *Failed* of Succeſs, That Solemn *Refuſal* would be made Uſe of, as Evidence to prove them Engaged in the *Invitation*, or, at leaſt, in the Approbation of that Invaſion.

Upon the Whole, the Conſtitution is much Indebted to the Laudable and Meritorious *Interpoſitions* of Biſhops in ſundry Times of Danger.

SECT. IX.

IT would be Injurious to forget the City of *London*; for Hiſtorians, in all Ages, have Tranſmitted to us, concerning the Citizens of that Metropolis, a *Venerable Teſtimony*, That the *Champions* and Aſſertors of this Conſtitution, and of the Freedom

and

and Liberties of *Britain*, have, in all Times, found from them, as from the Intelligent and Honeſt Part of the People, Ready Support and Aſſiſtance; notwithſtanding ſome other Hiſtorians have Painted thoſe *Champions, and thoſe Citizens* in other Colours.

And yet, neverthleſs, the *Blemiſh* which that Metropolis ſuffered in the Year 1683, ought to be made *Indelible*, when 104 Unſound and Infirm Common-Council-Men, over-voted 86 Reſolute and ſteady *Britons*, and *Treacherouſly* Surrendered and Yielded up to the then Powers, their Charter of *Liberties*; and not only Petitioned for, but Zealouſly Accepted and Embraced one of *Servitude*.

SECT. X.

IN the Reigns of King *John*, *Edward* II. *Richard* II. King *Henry* VI. King *Charles* I. and King *James* II. may be ſeen the Natural Products of Arbitrary Meaſures, *viz.* Nothing but the *Weakneſs* and *Poverty* of the Prince, and the *Diſcontent* and Hatred of the People, and, in Times of Need, their *Withdrawing* their Aſſiſtance, which brought thoſe Unhappy Reigns to Miſerable Periods.

Whereas in the Reigns of King *Edward* I. *Edward* III. *Henry* IV. *Henry* V. *Edward* IV. *Henry* VII. *Henry* VIII. Queen *Elizabeth*, and King *William* III. and in the Nine firſt Years of Queen *Anne*, may be ſeen the Glorious Fruits of Obſerving the Original Conſtitutions; for, in thoſe Times, thoſe Kings and Queens were Rich, Powerful, and Victorious, they were Beloved at Home, and Reſpected Abroad, and the Memorials of their Glorious Actions, are Treated with all imaginable Honour and Veneration; for when the People are Satisfied their King is in their Intereſt, they are free with their Purſes and Perſons to ſupport him, and will not ſuffer his Honour to be Touch'd, without Revenge and Vindication.

Amongſt theſe Renowned Kings, the Kings *Henry* VII. and *Henry* VIII. Deſerve a particular Diſtinction.

As for King *Henry* VII. a Politick Prince he was, if ever there were any; for he Beat down and Overturn'd as many

ſtrong Oppoſitions, as ever King of *England* did, always weighing his Undertakings by his Abilities, and Leaving nothing more to Hazard than ſo much as cannot be Denied it, in all human Actions; but that which Supported and Carried him through all Difficulties, was this Rule in his Adminiſtration, he would never Endure any *Mediation* in **Rewarding** his Servants, and therein was Exceeding Wiſe; for whatſoever he himſelf Gave, he himſelf Received Back the Thanks and the Love; Knowing well, That the Affections of Men (Purchaſed by nothing ſo readily as by Benefits) were **Trains** that better become *Great* Kings, than *Great* Subjects; for which Purpoſe, he kept a Book of *Memorandums*, of thoſe whom he was to *Reward*, and of whom he was to *Inquire*.

As for King *Henry* VIII. it would be Injurious to his Memory, not to Remember that at the ſame Time, when this Intrepid King, by the Aſſiſtance of the Two Eſtates of Lords and Commons, Effectually Suppreſſed the *Uſurped Supremacy* of the Biſhop of *Rome*, and Reſcued *Britain* from under *Spiritual Tyranny*, he alſo *Reſtored* to the People, thoſe vaſt Eſtates in Lordſhips and Lands, which the Monks and Fryars, by Unaccountable Frauds, had Subſtracted from their Credulous Anceſtors.

This **Conqueſt** has proved more Permanent and Profitable than the Victories of all our other Kings: The Sweetneſs of it is every Day more and more Odoriferous, inaſmuch as it Eſtabliſhed the Reformation, and became ſuch a *Spring* of Induſtry and Trade, that this Nation has made a *Progreſs* in Riches, which is almoſt Miraculous, and, by the Conſtitution, is become the *Centre* of Publick Security for *Private Property*, and this Security not only makes, but draws to it the Richeſt and moſt Skilful Traders, and conſequently is become the *Magnetic* of Treaſures and Affluence; and, doubtleſs, Riches and Power, as the *Effect*, will continue ſo long as the Original Conſtitution, the *Cauſe*, continues to be Obſerved.

SECT. XI.

IT is further Obſervable, That thoſe Men who *Write*, and thoſe Miniſters of State who *Adviſe*, *That a King may Aſſume and Exerciſe Powers or Prerogatives Inconſiſtent with or contrary*

trary to the Original Conſtitutions, are the worſt Enemies any King can have; for what a King Acquires, by following ſuch Advice is neither *Valuable nor Durable*, but what he Loſes is *Ineſtimable*; and yet all Ages afford Inſtances of ſuch Evil Counſel given and followed, and of the Calamitous Conſequences Enſuing thereupon.

To Conclude theſe Obſervations, if the Caſe were ſo with all Antecedent Kings, who were *Breakers* and *Obſervers* of the Original Conſtitution, then as to All *Succeeding* Kings, it may be Inferred, That the Natural Fruits and Effects of an Adherence to, and Obſervance of the Original Conſtitutions, will be Safety, Riches, Honour, the Love and Obedience of the People, their United Fidelity and Aſſiſtance, and conſequently Puiſſance and *Victory* over their Enemies; and the Authority of ſuch Kings being founded on the Antient Laws of the Land, and in the Love of their People, will Enable the Civil Officers (without other Forces) to Suppreſs ſuch Over-weening Subjects, as ſhall preſume to make Diſturbance; and that after this Life Ended, their Fame and Glory will be, in the Brighteſt Scenes, Tranſmitted down to all Succeeding Generations.

FINIS.

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On the Kings *Henry* VII. and VIII. 694
On Adviſers and Writers for and againſt the Conſtitution *ibid.*
Concluſion *ibid.*

ERRATA.

PAGE 25. l. 1. for *whom*, r. *which*. Ibid. l. 3. for *Subſiſted*, r. *Subſtituted*. P. 26. l. 22. r. *for Injuries* P. 52. l. 9. r. *Le Roy Remercier ſes bons Sujets, Accepte leur Benevolence, & ainſi le veult*; i. e. *The King Thanks his good Subjects, Accepts their Benevolence, and alſo Wills it to be a Law*. P. 97. l. 7. for *Preportion*, r. *Propoſition*. P. 122. l. 25. for *Reptitious*, r. *Reptilious*. P. 151. l. 19. for *made is*, r. *is made*. P. 237. l. 26. for *King* John, r. *King* Henry. P. 272. l. 27. for *his*, r. *this*. P. 383. in the Margin, for *Burton*, r. *Burnet*. P. 515. l. 17, 18. Inſtead of the Words *no Laws would be more proper than thoſe which*, r. *none could be more proper Judges of what would be proper Laws than thoſe who*. P. 525. l. ult. for *boiled*, r. *broiled*. P. 533. l. 19. for *Clarendon*, r. *Chancellor*. P. 611. l. 1. for *Juſtice*, r. *Injuſtice*. P. 648. l. 30. after the Word *which*, r. *the Miniſters of*.

The END.